

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

-----:
:
PHILIP R. MCHUGH,
:
Plaintiff,
:

vs.

CASE NO.
1:21-cv-00238

FIFTH THIRD BANCORP, et
al.,
:
Defendants.
:
-----:

***THIS TRANSCRIPT CONTAINS CONFIDENTIAL --
SUBJECT TO PROTECTIVE ORDER TESTIMONY***

Videotaped
Deposition of: ROBERT PAUL SHAFFER

Taken: By the Plaintiff

Pursuant to Notice

Date: August 24, 2023

Time: Commencing at 9:48 a.m.

Place: Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202

Before: Wendy L. Raymer, RPR, CRR
and
Bruce L. Sandy, Videographer
Notaries Public-State of Ohio

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Peter A. Saba, Esq.

4 and

5 Joshua M. Smith, Esq.

6 of

7 Stagnaro, Saba & Patterson Co., L.P.A.

8 2623 Erie Avenue

9 Cincinnati, Ohio 45208

10 Phone: (513) 533-2701

11 Email: Pas@sspfirm.com

12 jms@sspfirm.com

13 and

14 Appearing via Videoconference in Sylvania,
15 Ohio:

16 John J. McHugh, III, Esq.

17 of

18 McHugh & McCarthy, Limited

19 5580 Monroe Street

20 Sylvania, Ohio 43560

21 Phone: (419) 885-3597

22 On behalf of the Defendants and the Deponent:

23 Michael L. Cioffi, Esq.

24 and

25 Collin D. Hart, Esq.

of

Blank Rome LLP

1700 PNC Center

201 East Fifth Street

Cincinnati, Ohio 45202

Phone: (513) 362-8700

Email: Michael.cioffi@blankrome.com

Collin.hart@blankrome.com

Also Present:

Philip R. McHugh

Phenise Poole, Esq., Fifth Third Bancorp

Brian Thomas, Esq., Fifth Third Bancorp

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<p>Page 5</p> <p>1 THE VIDEOGRAPHER: Today is August 24, 2023.</p> <p>2 The time is 9:48 a.m. We're on the record for the</p> <p>3 deposition of Robert P. Shaffer for a case pending</p> <p>4 in the United States District Court, Southern</p> <p>5 District of Ohio, Western Division, Case No.</p> <p>6 1:21-CV-00238, entitled Philip R. McHugh, Plaintiff</p> <p>7 versus Fifth Third Bancorp, et al., Defendants.</p> <p>8 If at this time all counsel present would</p> <p>9 introduce themselves for the record, then the</p> <p>10 witness can be sworn.</p> <p>11 MR. SABA: Peter Saba on behalf of the</p> <p>12 Plaintiff Philip McHugh.</p> <p>13 MR. SMITH: Joshua Smith on behalf of the</p> <p>14 Plaintiff Philip McHugh.</p> <p>15 MR. CIOFFI: Michael Cioffi and Collin Hart of</p> <p>16 Blank Rome on behalf of all the defendants. We</p> <p>17 also represent Mr. Shaffer personally pursuant to a</p> <p>18 joint written representation agreement.</p> <p>19 MR. THOMAS: Brian Thomas for Fifth Third.</p> <p>20 MS. POOLE: Phenise Poole for Fifth Third.</p> <p>21 ROBERT PAUL SHAFFER,</p> <p>22 of lawful age, a witness herein, being first duly sworn</p> <p>23 as hereinafter certified, was examined and deposed as</p> <p>24 follows:</p> <p>25</p>	<p>Page 7</p> <p>1 Q. How long have you lived at that address?</p> <p>2 A. 21 years.</p> <p>3 Q. Who do you live there with?</p> <p>4 A. My wife, and I have three daughters. One's</p> <p>5 not there anymore, and two are in college.</p> <p>6 Q. What's the extent of your education?</p> <p>7 A. I have a bachelor's in business administration</p> <p>8 and accounting from Bucknell University.</p> <p>9 Q. What year did you obtain that?</p> <p>10 A. '91, I graduated. 1991.</p> <p>11 Q. What's your date of birth?</p> <p>12 A. [REDACTED] 1969.</p> <p>13 Q. What is your current role with Fifth Third</p> <p>14 Bank?</p> <p>15 A. I'm the chief risk officer.</p> <p>16 Q. What did you do to prepare for today's</p> <p>17 deposition?</p> <p>18 A. I talked to my attorneys.</p> <p>19 Q. Anything else?</p> <p>20 A. No.</p> <p>21 Q. Did you talk to anybody else at Fifth Third</p> <p>22 besides your attorneys?</p> <p>23 A. No.</p> <p>24 Q. Have you discussed this case with anybody at</p> <p>25 Fifth Third besides your attorneys?</p>
<p>Page 6</p> <p>1 EXAMINATION</p> <p>2 BY MR. SABA:</p> <p>3 Q. Mr. Shaffer, could you go ahead and state your</p> <p>4 name for the record, please, and spell your last name?</p> <p>5 A. Robert Paul Shaffer. Last name is spelled</p> <p>6 S-h-a-f-f-e-r.</p> <p>7 Q. Have you ever had your deposition taken</p> <p>8 before?</p> <p>9 A. I have not.</p> <p>10 Q. Sir, I'm going to be asking you a series of</p> <p>11 questions. If there's anything you don't hear or</p> <p>12 understand, please feel free to ask me to repeat or</p> <p>13 rephrase the question. For the sake of the court</p> <p>14 reporter, notwithstanding the fact this is being taken</p> <p>15 by video, I do need you to answer verbally. No shaking</p> <p>16 of the head or uh-uhs or uh-huhs. It's difficult for</p> <p>17 her to take that down.</p> <p>18 Additionally, if you can wait for me to finish</p> <p>19 my question before you answer, and I'll try and do the</p> <p>20 same before I ask another question. It also makes it</p> <p>21 easier for the court reporter to take down the</p> <p>22 information. Do you understand that?</p> <p>23 A. I do.</p> <p>24 Q. Okay. Can you give me your address, please?</p> <p>25 A. [REDACTED]</p>	<p>Page 8</p> <p>1 A. Nothing substantial, only my administrative</p> <p>2 assistants and a couple others to reschedule some</p> <p>3 meetings for today because of the deposition.</p> <p>4 Q. You've not discussed any other aspects of this</p> <p>5 case?</p> <p>6 A. No.</p> <p>7 Q. Have you communicated with anybody else at</p> <p>8 Fifth Third regarding aspects of this case, whether by</p> <p>9 text message, email, or otherwise?</p> <p>10 A. No, not outside of my counsel.</p> <p>11 Q. Did you review any documents in preparation</p> <p>12 for this deposition today?</p> <p>13 MR. CIOFFI: Objection. I'm going to instruct</p> <p>14 him not to answer. Whatever documents he reviewed,</p> <p>15 he reviewed at my direction. That's protected by</p> <p>16 attorney-client privilege, but also by the work</p> <p>17 product privilege.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Did you review any documents other than at</p> <p>20 Mr. Shaffer's -- at Mr. Cioffi's direction?</p> <p>21 A. No.</p> <p>22 (Deposition Exhibit 1 is marked for</p> <p>23 identification.)</p> <p>24 BY MR. SABA:</p> <p>25 Q. Mr. Shaffer, I've handed you what has been</p>

<p>1 marked as Exhibit 1. Can you identify that for me, 2 please? 3 A. It is my Fifth Third executive bio. 4 Q. Is the information on that executive bio 5 current? 6 A. It is not. 7 Q. What is not current? 8 A. The fact that I'm currently the chief risk 9 officer. 10 Q. You became chief risk officer November 2020; 11 is that correct? 12 A. That is correct. 13 Q. And you were the chief human resources officer 14 beginning in February 2017; is that right? 15 A. Yes. 16 Q. Going back to your position as chief human 17 resources officer, what were your duties? 18 A. My primary responsibilities were to lead the 19 strategic aspects and the execution of our human capital 20 strategies and processes for the company, things like 21 talent acquisition, learning development, compensation 22 benefits, human capital operations. 23 Q. Who was your direct supervisor in 24 that position? 25 A. Initially it was Teresa Tanner, and then it</p>	<p>Page 9</p> <p>1 through Mr. Carmichael? 2 A. Both. 3 Q. What are your duties as chief risk officer? 4 A. I'm responsible for seeing -- overseeing all 5 the risk management aspects of the company, and ensuring 6 that we have good risk management processes and controls 7 in place and complying with regulatory compliance and 8 requirements and other expectations. 9 Q. Who do you report to as chief risk officer? 10 A. Tim Spence. 11 Q. In the period of time that you were chief 12 human resources officer, who reported to you? 13 A. I had multiple direct reports. I would have 14 had Nancy Pinckney reported to me, Shawn Harter, Maureen 15 Balent, Peg Julia reported to me. That's who I recall 16 right now. Chris Sonneman, I'm sorry, with compensation 17 benefits. 18 Q. What calendar system do you use at Fifth 19 Third? 20 A. Microsoft Outlook. 21 Q. How long have you been using that calendar 22 system at Fifth Third? 23 A. Personally or as a company? 24 Q. Both. 25 A. I don't know as a company. I don't recall</p> <p>Page 11</p>
<p>1 subsequently changed to Greg Carmichael. 2 Q. When did it change to Greg Carmichael? 3 A. I don't recall the exact date. 4 Q. Do you recall the year? 5 A. 2018, I believe. 6 Q. Do you recall when in 2018? 7 A. I do not. 8 Q. What role did Teresa Tanner hold? 9 A. She was our chief administrative officer, I 10 believe was her official title. 11 Q. Why did you stop reporting to Teresa Tanner 12 and start reporting directly to Greg Carmichael? 13 A. Teresa left the company and my role was 14 changed to reporting to Greg Carmichael. 15 Q. As chief human resources officer, what role 16 did you serve with respect to succession planning for 17 president and CEO of Fifth Third Bank? 18 A. I served in an administrative capacity at the 19 direction of the board. 20 Q. What specifically did you do? 21 A. I provided the board with information that 22 they requested or needed for the process and oversaw 23 preparation of such information at the request and what 24 they needed. 25 Q. Did you work directly with the board or</p> <p>Page 10</p>	<p>Page 12</p> <p>1 when we started using it personally either -- or I 2 started using it. 3 Q. When did you start with Fifth Third? 4 A. 2002. 5 Q. What was your role? 6 A. I was the director of financial audit. 7 Q. Is it fair to say that between January 1st of 8 2018 and November 1st of 2020, that Fifth Third was 9 using Microsoft Outlook for their calendar systems? 10 A. I believe it is fair to say that. 11 Q. Have you deleted information from your 12 calendar from the time period January 1, 2018 through 13 November 1, 2020? 14 A. No. 15 Q. What email system do you use at Fifth Third? 16 A. It's a Microsoft Outlook product, I guess. I 17 don't know all the different names of the suites of 18 email versus calendar and so forth, but I assume it's 19 all the same. 20 Q. And, again, with respect to that email system, 21 that was the same email system that you were using at 22 Fifth Third between the time period of January 1, 2018 23 and November 1, 2020; is that correct? 24 A. I believe. I know we upgrade our technologies 25 all the time. So I can't be -- I wasn't in charge of</p>

<p>Page 13</p> <p>1 that. I can't be specifically certain if we just did</p> <p>2 version updates or changed applications.</p> <p>3 Q. Have you deleted any emails from the time</p> <p>4 period of January 1, 2018 through November 1, 2020?</p> <p>5 A. When? What's the period of time? I mean,</p> <p>6 during that period I would have -- I get things every</p> <p>7 day that I delete, junk emails and things like that.</p> <p>8 Q. Other than junk emails, have you deleted any</p> <p>9 emails or correspondence between yourself and Greg</p> <p>10 Carmichael during that time period?</p> <p>11 MR. CIOFFI: Objection. Overbroad. Do you</p> <p>12 mean pertaining to this case?</p> <p>13 MR. SABA: Any emails.</p> <p>14 MR. CIOFFI: Objection. Not discoverable.</p> <p>15 You may answer.</p> <p>16 THE WITNESS: I don't recall. I'm sure -- I</p> <p>17 try to keep my email inbox pretty clean on a daily</p> <p>18 basis because we get so many. So Greg could have</p> <p>19 sent me an email just asking me to do something or</p> <p>20 sending me information that I could have deleted,</p> <p>21 sure.</p> <p>22 BY MR. SABA:</p> <p>23 Q. Did you delete any emails between yourself and</p> <p>24 Tim Spence between the time period of January 1, 2018</p> <p>25 and November 1, 2020?</p>	<p>Page 15</p> <p>1 Q. When did you first become aware of this</p> <p>2 lawsuit between Mr. McHugh and Fifth Third Bank and</p> <p>3 Mr. Carmichael?</p> <p>4 A. I don't remember the specific date. I don't</p> <p>5 recall it.</p> <p>6 Q. Were you ever informed that you were not to</p> <p>7 delete any emails after the time period that this</p> <p>8 litigation was filed?</p> <p>9 A. I was.</p> <p>10 Q. Have you deleted any emails since this</p> <p>11 litigation was filed?</p> <p>12 A. Absolutely not.</p> <p>13 Q. Do you have a separate email that you use at</p> <p>14 home?</p> <p>15 A. A personal email?</p> <p>16 Q. Yes.</p> <p>17 A. I do.</p> <p>18 Q. What is that email address?</p> <p>19 A. It's --</p> <p>20 MR. CIOFFI: Objection. I'm going to</p> <p>21 designate that as confidential.</p> <p>22 (The following testimony is Confidential --</p> <p>23 Subject to Protective Order.)</p>
<p>Page 14</p> <p>1 A. I --</p> <p>2 MR. CIOFFI: Same objection.</p> <p>3 THE WITNESS: I give the same response.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Which is?</p> <p>6 A. Which is on a day-to-day basis, Tim certainly</p> <p>7 could have sent me emails that -- asking me for</p> <p>8 information, giving me information that I didn't deem I</p> <p>9 needed to save just on the day-to-day operations of my</p> <p>10 inbox.</p> <p>11 Q. Did you delete any emails between yourself and</p> <p>12 Phil McHugh between the time period of January 1, 2018</p> <p>13 and November 1, 2020?</p> <p>14 MR. CIOFFI: Same objection. Not</p> <p>15 discoverable. Overbroad. You may answer.</p> <p>16 THE WITNESS: Same answer.</p> <p>17 BY MR. SABA:</p> <p>18 Q. But you're saying yes, you deleted emails on a</p> <p>19 daily basis?</p> <p>20 A. I said I could have, you know, I had a</p> <p>21 day-to-day email between Phil and I that I didn't deem</p> <p>22 that I needed to save, just informational items or</p> <p>23 something like that. We share articles, you know,</p> <p>24 publications, things like that that, you know, once you</p> <p>25 read you don't need to keep.</p>	<p>Page 16</p> <p>1 * * *</p> <p>2 BY MR. SABA:</p> <p>3 Q. Go ahead.</p> <p>4 MR. CIOFFI: You can give it.</p> <p>5 THE WITNESS: [REDACTED].</p> <p>6 * * *</p>

<p>Page 17</p> <p>1 (The previous testimony is Confidential --</p> <p>2 Subject to Protective Order.)</p> <p>3 BY MR. SABA:</p> <p>4 Q. How long have you had that email address?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you had it longer than five years?</p> <p>7 A. I believe I have.</p> <p>8 Q. Did you ever use your personal email to</p> <p>9 communicate with Mr. Carmichael?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did you ever use your personal email to</p> <p>12 communicate with Mr. Spence?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you ever use your personal email to</p> <p>15 communicate with Phil McHugh?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Who is your cell phone provider?</p> <p>18 A. Verizon.</p> <p>19 Q. How long has Verizon been your cell phone</p> <p>20 provider?</p> <p>21 A. I don't know.</p> <p>22 Q. Has Verizon been your cell phone provider</p> <p>23 since before January 1, 2018?</p> <p>24 A. I believe so.</p> <p>25 Q. Have you ever communicated by text message</p>	<p>Page 19</p> <p>1 Q. At some point in time, did you start to have</p> <p>2 daily meetings with Mr. Carmichael?</p> <p>3 A. No.</p> <p>4 Q. Never?</p> <p>5 A. Daily meetings, no.</p> <p>6 Q. Didn't you have a period of time where you</p> <p>7 would schedule daily meetings in the afternoon with</p> <p>8 Mr. Carmichael?</p> <p>9 MR. CIOFFI: Objection. You mean on a</p> <p>10 calendar or what kind of meeting, business-related</p> <p>11 meetings?</p> <p>12 BY MR. SABA:</p> <p>13 Q. Do you understand the question?</p> <p>14 A. I do not.</p> <p>15 Q. Is there a period of time between November 1st</p> <p>16 of 2018 -- January 1, 2018 and November 1, 2020, where</p> <p>17 you were having daily meetings, in-person meetings, with</p> <p>18 Mr. Carmichael?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any recollection of how frequently</p> <p>21 you would meet with Mr. Carmichael during that time</p> <p>22 period?</p> <p>23 MR. CIOFFI: Objection. Asked and answered.</p> <p>24 He's already answered that question.</p> <p>25 BY MR. SABA:</p>
<p>Page 18</p> <p>1 with Mr. Carmichael?</p> <p>2 A. Yes.</p> <p>3 Q. Have you deleted any of the text messages</p> <p>4 between you and Mr. Carmichael?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Have you ever communicated by Mr. Spence by</p> <p>7 text message?</p> <p>8 A. Yes.</p> <p>9 Q. Have you deleted any of the text messages</p> <p>10 between yourself and Mr. Spence?</p> <p>11 A. I do not believe so.</p> <p>12 Q. Have you ever communicated with Phil McHugh by</p> <p>13 text message?</p> <p>14 A. Yes.</p> <p>15 Q. Have you deleted any of the text messages</p> <p>16 between yourself and Mr. McHugh?</p> <p>17 A. I do not believe so.</p> <p>18 Q. Between January 1, 2018 and November 1, 2020,</p> <p>19 how frequently would you meet with Mr. Carmichael?</p> <p>20 A. I'm sorry, which time period again?</p> <p>21 Q. January 1, 2018 through November 1, 2020?</p> <p>22 A. I have no idea how many times I would meet</p> <p>23 with him or how frequently I would meet with him. We're</p> <p>24 in offices next to one another, so I'd see him in the</p> <p>25 hall quite frequently.</p>	<p>Page 20</p> <p>1 Q. Go ahead.</p> <p>2 MR. CIOFFI: You may answer again.</p> <p>3 THE WITNESS: What's the question again?</p> <p>4 BY MR. SABA:</p> <p>5 Q. Do you have any recollection of how frequently</p> <p>6 you would meet with Mr. Carmichael during the period of</p> <p>7 time between January 1, 2018 and November 1, 2020?</p> <p>8 A. No.</p> <p>9 MR. CIOFFI: Counsel, I'm going to object and</p> <p>10 designate this as confidential. It's designated</p> <p>11 for attorneys' eyes only. The court has not</p> <p>12 permitted it to be used beyond that.</p> <p>13 (Mr. McHugh exits the room.)</p> <p>14 MR. SABA: Our position is we can use it for</p> <p>15 purposes of deposition, particularly if it's a</p> <p>16 document that Mr. Shaffer created. So he can see</p> <p>17 this and the attorneys can see this. We've had the</p> <p>18 client step out of the room. So at this point, we</p> <p>19 can use it in this deposition.</p> <p>20 MR. CIOFFI: For the court reporter, if you</p> <p>21 could designate this as confidential. There's</p> <p>22 privileged, confidential, and other information on</p> <p>23 this particular document. So I'm going to ask you</p> <p>24 not to review it and to keep it segregated from the</p> <p>25 other documents that are exhibits.</p>

<p style="text-align: right;">Page 21</p> <p>(The following testimony is Confidential -- Subject to Protective Order.)</p>	<p style="text-align: right;">Page 23</p> <p>message is?</p> <p>A. "Do you want to move our date" -- "Do you want to move our daily 3:30 meeting tomorrow to the morning?"</p> <p>Q. And that's the text message you sent to Mr. Carmichael; is that right?</p> <p>A. Yes.</p> <p>Q. And he responds, "Yes. Thanks." Is that correct?</p> <p>A. He does.</p> <p>Q. So at that point in time, you were having daily meetings with Mr. Carmichael; is that correct?</p> <p>A. That's what this says, but I do not recall having daily meetings with Mr. Carmichael.</p> <p>Q. You're the one who wrote that text, correct?</p> <p>A. Correct.</p> <p>Q. So there's clear indication at some point in time you were having daily meetings with Mr. Carmichael, correct?</p> <p>A. Well, I don't know if this -- it was -- Greg and I, by ourselves, with others, we were meeting on -- or we have lots of projects and initiatives and issues and challenges and opportunities we work on in the bank for business purposes on a business as usual basis. It could have been any number of topics probably. But I do not recall having any daily one-on-one meetings with him</p>
<p style="text-align: right;">Page 22</p> <p style="text-align: center;">* * *</p> <p>(Deposition Exhibit 2 is marked for identification.)</p> <p>BY MR. SABA:</p> <p>Q. Mr. Shaffer, I've handed you what's been marked as Exhibit Number 2, and I'm going to refer to a Bates stamp number, which is that number in the bottom left-hand corner, do you see that, Fifth Third McHugh 0213076; do you see that?</p> <p>A. I do.</p> <p>Q. And let me represent to you, this is a series of text messages between yourself and Mr. Carmichael; do you see that?</p> <p>A. I do.</p> <p>Q. And your phone number is the 513-470-8400; is that correct?</p> <p>A. It is.</p> <p>Q. Okay. And I'm going to refer you to specifically the text message that you send to Mr. Carmichael on April 9, 2020 at 8:06 p.m.; do you see that? That would be 20:06 as written in military time?</p> <p>A. Uh-huh, yes.</p> <p>Q. Do you see that?</p> <p>A. Yeah.</p> <p>Q. Can you read that to me, what your text</p>	<p style="text-align: right;">Page 24</p> <p>at all.</p> <p>Q. You don't dispute what it says in this text, that you were having daily meetings at this time, correct?</p> <p>MR. CIOFFI: Objection. Mischaracterizes his testimony. He said he didn't remember them. But you may answer. Go ahead.</p> <p>THE WITNESS: I'm sorry, what was the question.</p> <p>BY MR. SABA:</p> <p>Q. You do not dispute what it says in this text, that you were having daily meetings with Mr. Carmichael at that point in time; is that correct?</p> <p>MR. CIOFFI: Objection to the form of the question. Is your question, is that what the text says?</p> <p>MR. SABA: No.</p> <p>MR. CIOFFI: What's your question?</p> <p>BY MR. SABA:</p> <p>Q. My question is -- let me know if you don't understand this, Mr. Shaffer. You do not dispute that you were having daily meetings with Mr. Carmichael in April of 2020, correct?</p> <p>MR. CIOFFI: Objection. Asked and answered.</p>

<p>1 BY MR. SABA:</p> <p>2 Q. Correct?</p> <p>3 THE WITNESS: Do I answer?</p> <p>4 MR. CIOFFI: You may answer, sure.</p> <p>5 THE WITNESS: I do not recall having daily</p> <p>6 meetings with him. I don't dispute that's what it</p> <p>7 says there was a daily meeting, but, again, I don't</p> <p>8 know if it was Greg and I or multiple people and</p> <p>9 some other business topic. I mean, we had a lot --</p> <p>10 like I said earlier and testified earlier, we have</p> <p>11 lots of things going on in the bank that might</p> <p>12 require daily meetings.</p> <p>13 For instance, we just went through a crisis in</p> <p>14 the banking industry here with certain banks in</p> <p>15 March, starting with Silicon Valley Bank, and we're</p> <p>16 meeting every day as an enterprise team to talk</p> <p>17 through our deposit gathering initiatives in the</p> <p>18 company and other impacts of that.</p> <p>19 So there could be any number of reasons that</p> <p>20 we have daily meetings as an enterprise team or a</p> <p>21 smaller enterprise team if we're working on a</p> <p>22 certain thing.</p> <p>23 BY MR. SABA:</p> <p>24 Q. How frequently would you communicate with Tim</p> <p>25 Spence between January 1, 2018 and November 1st --</p>	<p>Page 25</p>	<p>1 (The previous testimony is Confidential --</p> <p>2 Subject to Protective Order.)</p> <p>3 MR. SABA: If we can go off the record one</p> <p>4 second.</p> <p>5 THE VIDEOGRAPHER: The time is 10:14 a.m. We</p> <p>6 are going off the record.</p> <p>7 (A recess was taken from 10:14 a.m. to</p> <p>8 10:15 a.m.)</p> <p>9 (Mr. McHugh enters the room.)</p> <p>10 THE VIDEOGRAPHER: The time is 10:15 a.m. We</p> <p>11 are back on the record.</p> <p>12 MR. CIOFFI: I want to put on the record a</p> <p>13 colloquy counsel and I had during the break.</p> <p>14 There's a document, Exhibit 2, that was used, and</p> <p>15 it's for attorneys' eyes only. It has a lot of</p> <p>16 personal, medical, and other information that</p> <p>17 cannot be used, should not be used, should not be</p> <p>18 disclosed. I've asked counsel to redact that kind</p> <p>19 of information if he's going to use these</p> <p>20 attorneys' eyes only documents, documents with</p> <p>21 confidential and sensitive, medical, and other</p> <p>22 information. Counsel agreed to do that. So at the</p> <p>23 end of the deposition, at some point, the court</p> <p>24 reporter will redact these particular sections of</p> <p>25 the document.</p>	<p>Page 27</p>
<p>1 November 1, 2020?</p> <p>2 A. I don't know how frequently.</p> <p>3 Q. How frequently would you meet with Tim Spence</p> <p>4 during that same time period?</p> <p>5 A. I could not -- I don't know how frequently I</p> <p>6 met with him.</p> <p>7 * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 26</p>	<p>1 MR. SABA: And just my comment would be, we</p> <p>2 can review that and, to the extent we deem it</p> <p>3 necessary, we can block out those portions.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, with respect to your role as</p> <p>6 chief human resources officer, what involvement did you</p> <p>7 have with respect to inclusion and diversity?</p> <p>8 A. So in that role, the chief inclusion and</p> <p>9 diversity officer, Stephanie Smith, reported to me, and</p> <p>10 we would discuss various strategies that she was leading</p> <p>11 or thinking about leading and implementing in the</p> <p>12 company related to those topics. And I would, you know,</p> <p>13 obviously ask questions, challenge, support, and so</p> <p>14 forth related to those strategies and what Stephanie's</p> <p>15 work was.</p> <p>16 Q. Were you involved in putting together the</p> <p>17 inclusion tool kit in 2020?</p> <p>18 A. Just from a, you know, review perspective. I</p> <p>19 was not the primary person putting -- or people putting</p> <p>20 that together. Stephanie would have led that effort.</p> <p>21 Q. Did you receive diversity and inclusion</p> <p>22 training in 2020?</p> <p>23 A. I did as part of our annual training program.</p> <p>24 Q. When did you receive that in 2020?</p> <p>25 A. I have no idea.</p>	<p>Page 28</p>

<p>Page 29</p> <p>1 Q. Did your training include an understanding 2 regarding the use of microaggression and inherent bias? 3 A. I believe it did. 4 Q. What did you learn about microaggression and 5 inherent bias? 6 A. Well, I don't know if I necessarily learned 7 anything new because from a microaggression perspective 8 I know what those are. 9 Q. What did you understand microaggression to be? 10 A. It's really unknowingly or unconsciously 11 making comments about protected classes. 12 Q. And do you recognize age to be a protected 13 class? 14 A. I do. 15 Q. Do you recognize the comments like "silver 16 fox" would be a microaggression? 17 A. Not as it was used in Fifth Third. It was not 18 a microaggression. 19 Q. How would the term silver fox be used at Fifth 20 Third? 21 A. Phil actually used it himself. He called 22 himself the Silver Fox. I think he considered it a 23 badge of honor. He considered it a term of endearment. 24 He -- I think he thought about how, you know, his looks, 25 his intelligence, and his dress represented that. He</p>	<p>Page 31</p> <p>1 silver fox text messages? 2 A. My phone was provided to counsel at the 3 beginning of this. 4 Q. And your position is you didn't delete any of 5 these silver fox text messages that you received from 6 Phil McHugh? 7 A. I don't recall deleting any text messages 8 between Phil and I. 9 Q. So all the silver fox text messages that 10 you're referring to where Phil refers to himself as the 11 Silver Fox should be in those text messages; is that 12 correct? 13 A. They would be, yes. 14 Q. Okay. When else did you -- when else did Phil 15 McHugh refer to himself as the Silver Fox? 16 A. I don't recall specific dates or times, but in 17 conversations we had, I was involved with him and others 18 in the company, he would refer to himself as the Silver 19 Fox. 20 Q. Do you recall any specific situations? 21 A. I don't recall any specifics, just that he did 22 it. 23 Q. Do you recall a time period when this 24 occurred? 25 A. It was over, you know, a long period of time.</p>
<p>Page 30</p> <p>1 called himself the Silver Fox quite a bit. And in my 2 role as a CHRO, Phil McHugh never came to me and raised 3 any concerns about being called the Silver Fox. We 4 train our people to do that, to talk to their manager, 5 to talk to HR. We have an ethics line number that 6 somebody could call, and I am not aware of any time Phil 7 McHugh ever raised a concern about being called the 8 Silver Fox. It was quite -- quite the opposite. 9 Q. You indicated that you said Phil McHugh used 10 that term frequently. What did you mean by that? 11 A. When he called himself the Silver Fox or -- he 12 would just call himself the Silver Fox. 13 Q. And how frequently would that be? 14 A. I don't know necessarily the number of times, 15 but from time to time he would call himself that. He 16 would put it in text messages. I remember getting text 17 messages where he called himself the Silver Fox or you 18 wouldn't want the Silver Fox to be upset or something 19 like that. So he used it himself. 20 Q. Do you still have all those text messages? 21 A. I have no idea. 22 Q. You said you -- 23 A. I haven't deleted any. To my recollection, I 24 don't recall deleting any. 25 Q. Have you provided those to counsel, all these</p>	<p>Page 32</p> <p>1 I don't remember exact when I first heard it. But over 2 the years I've heard him refer to himself as the Silver 3 Fox, yes. 4 Q. "The years," what do you mean by the years? 5 Can you give me a time period? 6 A. I can't give you an exact time period, but, 7 you know, we were all executives for Fifth Third, 8 working on the same floor, going to a lot of the same 9 meetings and so forth. So but I don't have a specific 10 time period. 11 Q. Who else would refer to Phil McHugh as the 12 Silver Fox? 13 A. I think others of his peers would. Again, 14 Phil embraced it. He enjoyed it. He kind of brought it 15 on as his own persona. 16 Q. How do you know he embraced it and enjoyed it? 17 A. Because he called himself that. He never 18 complained about being called that. And, you know, I 19 think he was happy to be called that. 20 Q. Why do you think he was happy to be called 21 that? 22 A. As I explained earlier, I think he thought it 23 was a term of endearment, a badge of honor, 24 representative of how he dresses, looks, and his 25 intelligence.</p>

<p>Page 33</p> <p>1 Q. Who were the other peers that would refer to 2 Phil as the Silver Fox?</p> <p>3 A. I would say Jamie Leonard was, Tayfun Tuzun, 4 other members, other members of the enterprise team. I 5 can't remember specifics.</p> <p>6 Q. Greg Carmichael?</p> <p>7 A. I don't know if I remember Greg referring to 8 him as that. I don't recall.</p> <p>9 Q. Did anybody ever refer to Phil as the silver 10 fox in front of Greg Carmichael?</p> <p>11 A. Not that I recall.</p> <p>12 Q. You indicated earlier at Fifth Third we would 13 use the term silver fox as a compliment; is that right?</p> <p>14 MR. CIOFFI: Objection. That's not what he 15 said. Do you want to ask him if he said that? 16 That's not what he said.</p> <p>17 MR. SABA: The record speaks for itself.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Go ahead.</p> <p>20 MR. CIOFFI: It does speak for itself.</p> <p>21 THE WITNESS: I didn't say it was a compliment 22 to him.</p> <p>23 BY MR. SABA:</p> <p>24 Q. It wasn't perceived as a compliment to him?</p> <p>25 A. I think he perceived it as a compliment to</p>	<p>Page 35</p> <p>1 witness has already testified.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Go ahead.</p> <p>4 A. Definitely not that I'm aware of.</p> <p>5 Q. You were aware that with respect to the 6 reference to silver fox that it was indicative of Phil 7 McHugh's age, correct?</p> <p>8 MR. CIOFFI: Objection. Lack of foundation. 9 No basis in the record. You may answer.</p> <p>10 THE WITNESS: Absolutely not. It was never 11 based on his age.</p> <p>12 BY MR. SABA:</p> <p>13 Q. What was your role with respect to creating 14 the diversity and inclusion committee?</p> <p>15 MR. CIOFFI: Objection. Asked and answered. 16 He answered that 15 minutes ago. Go ahead. You 17 can answer.</p> <p>18 THE WITNESS: I was involved in the initial 19 person -- including leadership -- diversity 20 leadership council, but Stephanie Smith was really 21 leading the charge in forming that.</p> <p>22 BY MR. SABA:</p> <p>23 Q. You selected people that would be on the 24 diversity inclusion counsel, is that what you called it?</p> <p>25 A. Yeah. The DLC, yeah. Again, Stephanie</p>
<p>Page 34</p> <p>1 him.</p> <p>2 Q. How did you perceive it?</p> <p>3 A. I just perceived it as something Phil liked to 4 be called because he used it himself. And he never 5 raised any concern to me in my role as the chief human 6 resources officer about it.</p> <p>7 Q. When is the first time that Phil McHugh 8 experienced an adverse employment action in conjunction 9 with being referred to as the Silver Fox?</p> <p>10 MR. CIOFFI: Objection. Lack of foundation. 11 There's no basis that he ever did.</p> <p>12 BY MR. SABA:</p> <p>13 Q. Go ahead. Answer the question.</p> <p>14 A. He never did, to my knowledge.</p> <p>15 Q. He never received an adverse employment action 16 ever?</p> <p>17 A. As it relates to the silver fox, being called 18 that, is that what -- what was your question again? 19 Sorry.</p> <p>20 Q. At any point in time during which Phil McHugh 21 was being referred to as the Silver Fox, did he 22 experience an adverse employment action?</p> <p>23 MR. CIOFFI: Objection to the form of the 24 question. Lacks the foundation. Assumes facts not 25 in evidence. It's contradictory to what the</p>	<p>Page 36</p> <p>1 reported to me. There were others involved in 2 assessing. We wanted to be a broad cross-section of 3 people to be included on that council, yes.</p> <p>4 Q. And one of the people you selected was Phil 5 McHugh; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And you selected Phil because of his age, 8 correct?</p> <p>9 A. Absolutely not.</p> <p>10 Q. You didn't select Phil because of his age?</p> <p>11 A. No. We selected Phil because he covered a big 12 area. He was running the regions then so he had a broad 13 geographic view of the company and hearing from 14 different employees across the whole footprint. So it 15 was valuable to have his insight and perspectives of 16 what he led at that time.</p> <p>17 (Mr. McHugh exits the room.) 18 (The following testimony is Confidential -- 19 Subject to Protective Order.)</p> <p>20 21 22 23 24 25</p>

<p>1 * * *</p> <p>2 (Deposition Exhibit 3 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, I've handed you what has been</p> <p>6 marked as Exhibit Number 3. And you can see that it's</p> <p>7 also Bates stamped Fifth Third McHugh 0213026; do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 MR. CIOFFI: Counsel, I'm going to renew my</p> <p>11 other objection earlier. This is another</p> <p>12 attorneys' eyes only document. This particular</p> <p>13 document you were given in redacted form with only</p> <p>14 the relevant portion you're going to ask the</p> <p>15 witness about.</p> <p>16 Again, there is personal medical information</p> <p>17 that's highly inappropriate to put on the record.</p> <p>18 So, again, we need to redact these documents at a</p> <p>19 minimum, but I'll ask you to use the redacted</p> <p>20 versions because it's -- you were given it in a</p> <p>21 redacted form with only the relevant portions</p> <p>22 available for viewing. But go ahead. You've</p> <p>23 already introduced it.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Mr. Shaffer, this is a text message exchange</p>	<p>Page 37</p> <p>1 A. I don't dispute that's what the text says that</p> <p>2 you read, but it's not why we put Phil on the diversity</p> <p>3 council. This is banter back and forth between Tayfun</p> <p>4 and me.</p> <p>5 Q. And you wrote this text message, correct?</p> <p>6 A. Yes.</p> <p>7 * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 38</p> <p>1 between yourself and Tayfun Tuzun; do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And do you see -- referring to the June 4,</p> <p>4 2020 text message at 1:46 p.m. sent from you; do you see</p> <p>5 that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Can you read that to me?</p> <p>8 A. I'm sorry? From Tayfun or me?</p> <p>9 Q. From you. At 1:46 p.m., 13:46?</p> <p>10 A. Oh, sure. "We want you both on the Diversity</p> <p>11 Counsel."</p> <p>12 Q. And Tayfun Tuzun responds, "Are you adding</p> <p>13 Phil for his age?"</p> <p>14 A. Uh-huh.</p> <p>15 Q. And your response is, "Yes, even Tayfun"; is</p> <p>16 that correct?</p> <p>17 A. Yes.</p> <p>18 Q. So the reason you put Phil McHugh on the</p> <p>19 diversity counsel was because of his age, correct?</p> <p>20 MR. CIOFFI: Objection. Lacks foundation.</p> <p>21 You may answer.</p> <p>22 THE WITNESS: It is not.</p> <p>23 BY MR. SABA:</p> <p>24 Q. That's what you indicate in this text message;</p> <p>25 is that correct? You don't dispute what it says, right?</p>	<p>Page 40</p> <p>1 (The previous testimony is Confidential --</p> <p>2 Subject to Protective Order.)</p> <p>3 (Mr. McHugh enters the room.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Going back to your use of the term Silver Fox,</p> <p>6 how often would you refer to Phil McHugh as a silver</p> <p>7 fox?</p> <p>8 A. I believe as I testified earlier, I'm not sure</p> <p>9 how often.</p> <p>10 Q. And you would do that outside his presence; is</p> <p>11 that correct?</p> <p>12 A. I am not sure about that.</p> <p>13 Q. You don't recall using the term silver fox</p> <p>14 outside Phil's presence?</p> <p>15 A. I might have, sure.</p> <p>16 Q. And you understood with your microaggression</p> <p>17 training that even if there is an intended compliment</p> <p>18 with respect to the comment you're making about</p> <p>19 somebody, it could include an inherent bias within that;</p> <p>20 is that correct?</p> <p>21 MR. CIOFFI: Objection. Is that your</p> <p>22 testimony, Counsel? Is that a question?</p> <p>23 BY MR. SABA:</p> <p>24 Q. Do you understand the question?</p> <p>25 A. I do not.</p>

<p>Page 41</p> <p>1 Q. With respect to your micro -- training 2 regarding microaggression, you understood that even 3 though comment could be intended as a compliment, it 4 could contain inherent bias; is that correct? 5 A. It could, but not in this case because of what 6 I testified earlier with Phil's own use of it and never 7 complaining about it. 8 Q. And you understood that the term Silver Fox 9 included a reference to age; isn't that right? 10 A. It did not. 11 MR. CIOFFI: Objection. Asked and answered. 12 Counsel, you can't just keep asking questions until 13 you get the answer you want. That's not 14 appropriate. 15 MR. SABA: Go ahead. Answer the question. 16 MR. CIOFFI: He answered it directly. You may 17 answer one more time. 18 THE WITNESS: As I testified earlier, it did 19 not refer to age. 20 BY MR. SABA: 21 Q. When you would use that term, what would it 22 refer to? 23 MR. CIOFFI: Objection. Asked and answered. 24 Counsel, again, you can't repeat questions until 25 you get the answer you want. He's answered that</p>	<p>Page 43</p> <p>1 McHugh as a silver fox? 2 A. I do not know. 3 Q. But you do recall him referring to Phil McHugh 4 as a silver fox? 5 A. Yes. 6 Q. As you sit here today, do you know in what 7 context Tim Spence was referring to Phil McHugh as a 8 silver fox? 9 A. I would believe it's exactly the same as I 10 just testified a couple times to in terms of it being a 11 term of endearment for Phil, a representation of his 12 intelligence, and the fact that he called himself that. 13 Q. During the period of time that you were chief 14 human resources officer, what, if any, programs did 15 Fifth Third have that were specifically directed toward 16 preventing discrimination based upon age? 17 A. We didn't have any specific programs. We have 18 age representation, you know, across all generations in 19 our workforce. 20 Q. But you had no programs that were designed to 21 prevent or train against age discrimination in the 22 workplace? 23 A. No specific programs, but we do have very 24 specific policies and procedures from an HR perspective 25 that we do not discriminate hiring, promotion, etc.,</p>
<p>Page 42</p> <p>1 directly. 2 MR. SABA: I haven't asked that question. Go 3 ahead. 4 MR. CIOFFI: Yes, you did. Go ahead. 5 THE WITNESS: Can you repeat the question, 6 please? 7 MR. SABA: Sure. 8 BY MR. SABA: 9 Q. When you would use the term "silver fox" to 10 refer to Phil McHugh, what did it refer to? 11 A. Exactly what we all believed -- Phil believed 12 it to mean, a term of endearment, a badge of honor, 13 representation of Phil's intelligence, but nothing to do 14 with age. 15 Q. What did the silver refer to? 16 A. Quite frankly I don't know. It could be his 17 hair, I don't know. I have no idea. He called himself 18 that, so -- 19 Q. Do you ever recall Tim Spence referring to 20 Phil McHugh as a silver fox? 21 A. Yes. 22 Q. When do you recall Tim Spence referring to 23 Phil McHugh as a silver fox? 24 A. I don't recall when. 25 Q. How many times did Tim Spence refer to Phil</p>	<p>Page 44</p> <p>1 from an age perspective. 2 (Deposition Exhibit 4 is marked for 3 identification.) 4 BY MR. SABA: 5 Q. Mr. Shaffer, you've been handed what's been 6 marked as Exhibit 4, which is Bates stamped Fifth Third 7 McHugh 0214533 through 0214550; do you see that? 8 A. Sorry. What did you say the first numbers 9 were again? 10 Q. 0214533 -- 11 A. Uh-huh. 12 Q. -- through 0214550. 13 A. Yes. 14 Q. Can you identify that for me, please? 15 A. It is entitled, "Fifth Third Inclusion Tool 16 Kit From Awareness to Advocacy." 17 Q. And it's dated July 2020; is that correct? 18 A. That is correct. 19 Q. Have you seen this document before? 20 A. I have. 21 Q. Were you involved at all in the creation of 22 this document? 23 A. Not in the detailed construction of it. I 24 would have reviewed it. 25 Q. You're familiar with it; is that right?</p>

<p>1 A. Yes.</p> <p>2 Q. With respect to the business resource groups</p> <p>3 identified in the Fifth Third inclusion tool kit, Fifth</p> <p>4 Third did not have any business resource groups directed</p> <p>5 toward age; is that correct?</p> <p>6 MR. CIOFFI: Counsel, are you referring to a</p> <p>7 particular page?</p> <p>8 MR. SABA: I can refer to a page. Fifth Third</p> <p>9 McHugh 021459, which is page 17 of the document.</p> <p>10 THE WITNESS: I'm sorry. What was your</p> <p>11 question?</p> <p>12 BY MR. SABA:</p> <p>13 Q. With respect to Fifth Third's business</p> <p>14 resource groups, Fifth Third did not have a business</p> <p>15 resource group directed toward age; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. You indicated before that -- let me actually</p> <p>18 rephrase that.</p> <p>19 Is it your position that because Mr. McHugh</p> <p>20 referred to himself as silver fox, that it was okay for</p> <p>21 others to refer to him as silver fox?</p> <p>22 MR. CIOFFI: Objection. Asked and answered.</p> <p>23 MR. SABA: Go ahead.</p> <p>24 THE WITNESS: What's the question again?</p> <p>25 BY MR. SABA:</p>	<p>Page 45</p> <p>1 employee, a black employee of Fifth Third, referred to</p> <p>2 themselves as a black fox, would it be okay for other</p> <p>3 employees at Fifth Third to refer to that employee as a</p> <p>4 black fox?</p> <p>5 MR. CIOFFI: Objection. Go ahead. You may</p> <p>6 answer.</p> <p>7 THE WITNESS: I don't know. I don't know what</p> <p>8 context you're talking about. I don't know the</p> <p>9 relationships those people have. So I don't know.</p> <p>10 BY MR. SABA:</p> <p>11 Q. They're other employees in the bank, they're</p> <p>12 peers in the bank?</p> <p>13 MR. CIOFFI: Objection. He answered the</p> <p>14 question. Counsel, you can't just keep asking</p> <p>15 questions, the same question, to get the answer you</p> <p>16 want. You're entitled to a square, straightforward</p> <p>17 answer. He answered the question. Move on.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Let me answer -- let me ask the question</p> <p>20 again, because you indicated it would depend upon what</p> <p>21 positions they had in the bank and who the employees</p> <p>22 are; is that correct?</p> <p>23 A. I didn't.</p> <p>24 MR. CIOFFI: He did not. That's not what he</p> <p>25 said.</p> <p>Page 47</p>
<p>1 Q. The question is, is it your position that</p> <p>2 because Mr. McHugh referred to him as a silver fox that</p> <p>3 it was okay for others to refer to him as silver fox,</p> <p>4 other employees of Fifth Third?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So if a black employee at Fifth Third</p> <p>7 referred to themselves as the Black Fox, would it be</p> <p>8 okay for other employees at Fifth Third to refer to that</p> <p>9 employee as the Black Fox?</p> <p>10 MR. CIOFFI: Objection, Counsel. We're going</p> <p>11 down a really terrible path. It's not appropriate.</p> <p>12 I don't want to have to address this with the court</p> <p>13 again. The court has already admonished you not to</p> <p>14 do this.</p> <p>15 MR. SABA: No, the court did not admonish us.</p> <p>16 The court basically said we were free to explore</p> <p>17 this because it's an appropriate topic to pursue</p> <p>18 both -- in terms of this case. You weren't on the</p> <p>19 conference call with the court.</p> <p>20 MR. CIOFFI: I read the transcript.</p> <p>21 MR. SABA: And it specifically indicates we</p> <p>22 are free to pursue this, and they weren't going to</p> <p>23 waste time addressing your issue.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Back to the question, Mr. Shaffer. If an</p> <p>Page 46</p>	<p>1 BY MR. SABA:</p> <p>2 Q. Well, let's ask that question. With respect</p> <p>3 to that scenario, would it depend on what positions the</p> <p>4 respective employees hold in the bank?</p> <p>5 A. I said it would depend on the context, which I</p> <p>6 don't know what you're referring to. It would depend on</p> <p>7 the relationship those people have. It was -- I can't</p> <p>8 answer it. I was very involved in the situation with</p> <p>9 the silver fox because he called himself that</p> <p>10 frequently, as I testified earlier.</p> <p>11 Q. In the context of the hypothetical I gave you,</p> <p>12 under what situation would it be inappropriate for the</p> <p>13 one employee to refer to another black employee as black</p> <p>14 fox even if that black employee referred to themselves</p> <p>15 as black fox?</p> <p>16 MR. CIOFFI: Objection, Counsel. He answered</p> <p>17 the question. You keep asking it over and over in</p> <p>18 different --</p> <p>19 MR. SABA: He didn't answer that question.</p> <p>20 MR. CIOFFI: He did answer that question.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Mr. Shaffer, referring back to this</p> <p>23 hypothetical in a different situation, I'm asking you</p> <p>24 under what circumstances -- because you said it would</p> <p>25 depend on the circumstances -- under what circumstances</p> <p>Page 48</p>

<p>Page 49</p> <p>1 would it be inappropriate for one employee to refer to 2 another black employee as a black fox, even if that 3 black employee referred to themselves as Black Fox? 4 MR. CIOFFI: Objection. If you know, you may 5 answer. 6 THE WITNESS: I don't know the answer to that. 7 Again, I'd go back to it's the context of the 8 situation. It's the relationship of the people. I 9 can't speculate on hypotheticals. 10 BY MR. SABA: 11 Q. Do you acknowledge that a term such as "black 12 fox" constitutes a microaggression? 13 MR. CIOFFI: Objection. He answered it. You 14 keep asking it again. He said it depends on the 15 context. 16 MR. SABA: I didn't ask that question. 17 BY MR. SABA: 18 Q. Do you acknowledge that the term black fox 19 constitutes a microaggression? 20 A. I do not. It would depend on the context and 21 the relationship of the individuals. 22 Q. So at Fifth Third Bank, at certain times you 23 can use terms and they're not microaggression based upon 24 how you want to use the name calling, whether it 25 refers -- whether it's implicit of age or race; is that</p>	<p>Page 51</p> <p>1 would be appropriate to refer to a black employee as 2 black fox because of the context; is that right? 3 A. Again, I don't know. I would have to 4 understand the details of the context and the 5 relationship those individuals have. 6 Q. Are you saying that it's never appropriate or 7 there are times where it would be appropriate? 8 A. I don't know. 9 Q. You don't know if it's never appropriate? 10 MR. CIOFFI: Objection. Is there something 11 you didn't understand about his question? He 12 answered the question. He doesn't know. What more 13 do you want him to say? 14 BY MR. SABA: 15 Q. Mr. Shaffer -- 16 MR. CIOFFI: You can ask it again, but -- 17 BY MR. SABA: 18 Q. You're the chief -- you were the chief human 19 resources officer at Fifth Third; is that correct? 20 A. I was. 21 Q. Okay. So with respect to that, as you sit 22 here today, you say you don't know if there's a 23 situation or context -- let me rephrase this question. 24 As the chief human resources officer, as you 25 sit here today, you can't say that it would always be</p>
<p>Page 50</p> <p>1 correct? 2 MR. CIOFFI: Objection. Argumentative. 3 You're arguing with him to try and get the answer 4 you want. 5 MR. SABA: That's not -- 6 MR. CIOFFI: He's answered the question. 7 MR. SABA: Go ahead, Mr. Shaffer. 8 THE WITNESS: I didn't understand the 9 question. 10 BY MR. SABA: 11 Q. Okay. You indicate it would depend on the 12 context to be used in the office place; is that right? 13 So a term such as black fox, you're saying at Fifth 14 Third it may be appropriate to refer to a black employee 15 as black fox at certain times in the workplace; is that 16 correct? 17 MR. CIOFFI: Objection. He answered the 18 question now three times. It depends on the 19 context. Go ahead. You can answer it one more 20 time. 21 BY MR. SABA: 22 Q. Do you understand my question? 23 A. No. 24 Q. You said it depends on the context. My 25 question is, so at Fifth Third there are times where it</p>	<p>Page 52</p> <p>1 inappropriate to use a term to refer to a black employee 2 at Fifth Third as black fox? 3 MR. CIOFFI: Objection. Asked and answered. 4 It's hypothetical. Calls for speculation. He's 5 answered it, but... 6 7 BY MR. SABA: 8 Q. Go ahead. 9 MR. CIOFFI: You can answer it again. 10 THE WITNESS: Again, I'd have to understand 11 the specific context and the relationships the 12 individuals have. 13 BY MR. SABA: 14 Q. So what would be a context and a relationship 15 between the individuals that would make it appropriate 16 to refer to a black employee at Fifth Third as a black 17 fox? 18 MR. CIOFFI: Objection. Calls for 19 speculation. He said he doesn't know and can't 20 speculate. 21 BY MR. SABA: 22 Q. Go ahead. 23 A. I don't know. Again, every situation could 24 have its own context, could have its own relationship 25 aspects to it. So I don't know.</p>

<p>1 Q. Well, and what we're trying to understand, Page 53 2 you're saying there may a context or relationship where 3 it's appropriate. What is that? 4 MR. CIOFFI: Objection. He's answered. He 5 doesn't know. You can't force him to know 6 something he doesn't know. What's your point, 7 counsel? 8 THE WITNESS: Again, I don't know. I'd have 9 to understand the context and the relationship 10 aspects involved in the situation. 11 MR. CIOFFI: Counsel, I can tell by the look 12 on your face you don't like his answer, but that's 13 his answer. He's answered it squarely. 14 MR. SABA: No, no, no. I don't like -- 15 MR. CIOFFI: You keep asking it and then 16 arguing with him. 17 MR. SABA: I don't like the answers you're 18 making up for him. I hope -- that's all right. 19 BY MR. SABA: 20 Q. Mr. Shaffer, do you know enough, as the former 21 chief human resources officer at Fifth Third, to 22 recognize if there's situations where the term "black 23 fox," when used to refer to a black employee at Fifth 24 Third, would be inappropriate? 25 MR. CIOFFI: Objection. If you know, you can</p>	<p>1 MR. SABA: Thank you. Thank you for the Page 55 2 advice, Michael. 3 BY MR. SABA: 4 Q. Mr. Shaffer, so as you sit here today, as the 5 chief human resources officer for Fifth Third for over 6 three years, you can't tell me because you don't know of 7 a situation when it would be inappropriate for an 8 employee at Fifth Third to refer to a black employee as 9 black fox; is that correct? 10 MR. CIOFFI: Objection. Asked and answered. 11 Calls for speculation. 12 BY MR. SABA: 13 Q. Go ahead. 14 A. I'm telling you, I would have to understand 15 the details and the context of the situation and the 16 relationships to the individuals to determine. 17 Q. That's what I'm asking you for. What would be 18 the context, details, and relationships with individuals 19 where that would be inappropriate? 20 MR. CIOFFI: Objection. He's answered that 21 question, too, and it calls for speculation. It's 22 an inappropriate question, but you can answer it 23 again. 24 MR. SABA: It's not an inappropriate question. 25 MR. CIOFFI: You can't ask a witness to</p>
<p>1 answer the question. Page 54 2 THE WITNESS: I'm sorry. What's the question 3 again? 4 MR. SABA: Yes. 5 BY MR. SABA: 6 Q. I'm asking as the former chief human resources 7 officer for Fifth Third Bank, are there situations where 8 it would be inappropriate for an individual to refer to 9 a black employee as black fox? 10 A. Every situation has its own facts and 11 circumstances, so I don't know. We'd have to understand 12 the context and the relationship aspects to determine 13 one way or the other. 14 Q. And I'm asking you, is there a situation where 15 it would be inappropriate? 16 MR. CIOFFI: Objection. He answered the 17 question. It depends on the context. 18 BY MR. SABA: 19 Q. Yes, I'm asking you for a context to when it 20 would be inappropriate? 21 MR. CIOFFI: And he's answered that question 22 he doesn't know. The fact that you ask him five 23 times isn't going to put knowledge in his head. 24 Objection. Counsel, you need to move on. This is 25 ridiculous.</p>	<p>1 speculate. Page 56 2 MR. SABA: I'm not asking him to speculate. 3 MR. CIOFFI: Yes you are. 4 THE WITNESS: What's the question again? 5 MR. CIOFFI: The whole question is 6 hypothetical. The whole question calls 7 for speculation. 8 BY MR. SABA: 9 Q. As the chief human resources officer for Fifth 10 Third Bank for three years, I'm asking you, is there a 11 situation where it would be inappropriate for an 12 individual to refer to a black employee as black fox? 13 MR. CIOFFI: Objection. He's answered that 14 question. It depends on the circumstances. 15 THE WITNESS: As I've answered the question 16 multiple times, it would depend on the situation 17 and certain facts and circumstances and context and 18 relationships. 19 BY MR. SABA: 20 Q. And I asked you, what are the situations, 21 circumstances, facts, and relationships where it would 22 be inappropriate? 23 MR. CIOFFI: Objection. If he doesn't know, 24 he can't speculate. How many times does he have to 25 say it? He's answered it like about ten times now.</p>

<p>Page 57</p> <p>1 BY MR. SABA:</p> <p>2 Q. You don't know is what your answer is?</p> <p>3 A. I didn't say that. I said I'd have to</p> <p>4 understand the facts and circumstances, the context of</p> <p>5 the situation, and the relationships of the individuals.</p> <p>6 Q. Okay. And so of those factors, what would</p> <p>7 they need to be for it to be inappropriate?</p> <p>8 A. I don't want to speculate on what those</p> <p>9 situations might be. They're all individual.</p> <p>10 Q. So you can't give me a situation where that</p> <p>11 would be inappropriate?</p> <p>12 MR. CIOFFI: Counsel, he has said he can't</p> <p>13 speculate. Objection.</p> <p>14 BY MR. SABA:</p> <p>15 Q. Can you identify a situation where that would</p> <p>16 be inappropriate?</p> <p>17 MR. CIOFFI: Objection. Same objection.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Mr. Shaffer --</p> <p>20 A. What's the question?</p> <p>21 Q. -- can you identify a situation where it would</p> <p>22 be inappropriate for an employee at Fifth Third Bank to</p> <p>23 refer to a black employee at Fifth Third Bank as black</p> <p>24 fox?</p> <p>25 A. Again, as I've answered, I'd want to</p>	<p>Page 59</p> <p>1 then you would make an assessment, but --</p> <p>2 Q. Right.</p> <p>3 A. I don't want to speculate.</p> <p>4 Q. And I'm asking you to identify that?</p> <p>5 A. I don't want to speculate on what that might</p> <p>6 be because they're all individual and it could be</p> <p>7 complex.</p> <p>8 Q. But you can't identify a situation where that</p> <p>9 would certainly be inappropriate for an employee at</p> <p>10 Fifth Third Bank to refer to a black employee at Fifth</p> <p>11 Third Bank as black fox?</p> <p>12 MR. CIOFFI: Objection. He's answered it.</p> <p>13 BY MR. SABA:</p> <p>14 Q. Is that right?</p> <p>15 A. Same answer.</p> <p>16 Q. Do you understand what unconscious or implicit</p> <p>17 bias is?</p> <p>18 A. Yes.</p> <p>19 Q. What is unconscious or implicit bias?</p> <p>20 A. It's unknowingly making statements or comments</p> <p>21 about protected class individuals.</p> <p>22 Q. And what effect does unconscious or implicit</p> <p>23 bias have in the workplace?</p> <p>24 A. I'm sorry, I don't understand the question.</p> <p>25 Q. The question is, you identified what</p>
<p>Page 58</p> <p>1 understand the situation, the context, the facts and</p> <p>2 circumstances, and the relationships --</p> <p>3 Q. Okay. And I asked you --</p> <p>4 A. -- to be able to make a ruling on it.</p> <p>5 Q. And I asked you, can you identify a situation</p> <p>6 where that would be inappropriate?</p> <p>7 MR. CIOFFI: Objection. And he's answered it</p> <p>8 numerous times.</p> <p>9 Counsel, you're --</p> <p>10 MR. SABA: No, no. He doesn't want to answer</p> <p>11 it. I understand that.</p> <p>12 MR. CIOFFI: No, he did answer it. He can't</p> <p>13 speculate. I mean, what don't you understand</p> <p>14 about --</p> <p>15 MR. SABA: No, no. He can identify a</p> <p>16 situation.</p> <p>17 MR. CIOFFI: No. How do you know what he can</p> <p>18 do? He's answered the question.</p> <p>19 BY MR. SABA:</p> <p>20 Q. Mr. Shaffer --</p> <p>21 A. Same answer.</p> <p>22 Q. -- you can't identify a situation; is that</p> <p>23 right?</p> <p>24 A. Again, if you would go through the facts and</p> <p>25 circumstances, the relationship aspects, the context,</p>	<p>Page 60</p> <p>1 unconscious or implicit bias is. What effect can</p> <p>2 unconscious and implicit bias have in the workplace?</p> <p>3 A. Well, I guess it would depend on what is</p> <p>4 happening, what the context of the situation is, who's</p> <p>5 involved, and understanding the facts and circumstances</p> <p>6 of that situation.</p> <p>7 Q. Do you understand that unconscious or implicit</p> <p>8 bias can lead to workplace bias or decisions in the</p> <p>9 workplace based upon that bias?</p> <p>10 A. Sure.</p> <p>11 Q. When did you receive your training regarding</p> <p>12 microaggression and unconscious and implicit bias?</p> <p>13 MR. CIOFFI: Objection. He's answered that</p> <p>14 question, too, but go ahead.</p> <p>15 THE WITNESS: I mean, as part of our normal</p> <p>16 curriculum at Fifth Third. I can't remember when</p> <p>17 we started it, and I'm sure it's evolved over time</p> <p>18 in terms of the content and our curriculum on an</p> <p>19 annual basis.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Did you receive any documentation as part of</p> <p>22 that training?</p> <p>23 A. Well, it's typically online kind of tests --</p> <p>24 or not tests, training. There could be a testing</p> <p>25 component to it to assess your knowledge of what you</p>

<p>1 just went through.</p> <p>2 With any of our trainings, if there are any</p> <p>3 policies, guides, etc., those would be referenced in the</p> <p>4 training via links or where to go to get something on</p> <p>5 our website, Internet site.</p> <p>6 Q. What was the online training with respect to</p> <p>7 microaggression and unconscious or implicit bias?</p> <p>8 A. When are you talking about?</p> <p>9 Q. Any time between January 1 of 2018 and</p> <p>10 November 1, 2020.</p> <p>11 A. I'd have to go back and look at the individual</p> <p>12 training modules for each year to see explicitly what</p> <p>13 was in there on those topics.</p> <p>14 Q. Who provides those training modules?</p> <p>15 A. When you say "provides," what do you mean?</p> <p>16 Q. Are they -- are they created by Fifth Third?</p> <p>17 Are they created by a third-party source?</p> <p>18 A. I can't speak specifically to inclusion and</p> <p>19 diversity training, but typically we either have</p> <p>20 in-house construction of those materials or</p> <p>21 accommodation of getting third-party assistance on</p> <p>22 specific topics, but I'm answering that in the context</p> <p>23 of all of our annual training programs, compliance, risk</p> <p>24 management, inclusion, diversity, etc.</p> <p>25 Q. Who would have been responsible for creating</p>	<p>Page 61</p> <p>1 Q. When would there be reviews of the members of</p> <p>2 the enterprise committee?</p> <p>3 A. Typically the CEO would have a midyear</p> <p>4 discussion with the enterprise member on progress on</p> <p>5 goals and performance, expectations, opportunities, then</p> <p>6 there would be a formal annual review conducted roughly</p> <p>7 in February of each year where the enterprise member</p> <p>8 would have an opportunity to provide a self-review and</p> <p>9 the CEO would provide a written performance review</p> <p>10 rating, compensation information and so forth. But I</p> <p>11 think as with any manager, the CEO would provide</p> <p>12 feedback continuously throughout the year.</p> <p>13 Q. With -- go ahead. I'm sorry.</p> <p>14 A. When appropriate or when needed, positively or</p> <p>15 constructively.</p> <p>16 Q. What was your involvement with respect to the</p> <p>17 midyear review?</p> <p>18 MR. CIOFFI: Objection. Involvement with</p> <p>19 respect to himself or others or what?</p> <p>20 MR. SABA: I'll rephrase the question.</p> <p>21 MR. CIOFFI: Please.</p> <p>22 BY MR. SABA:</p> <p>23 Q. As the chief human resources officer in --</p> <p>24 between January 1, 2018 and November 1, 2020, what was</p> <p>25 your involvement with respect to the performance of the</p>
<p>Page 62</p> <p>1 or obtaining the inclusion and diversity training?</p> <p>2 A. Probably a combination of HR and legal, but I</p> <p>3 can't recall specifically for those individual modules.</p> <p>4 Q. Do you know if the modules had a particular</p> <p>5 name?</p> <p>6 A. I don't recall the specific names of them.</p> <p>7 Q. Would a report be generated after somebody</p> <p>8 completed the training?</p> <p>9 A. What do you mean by "report"?</p> <p>10 Q. A report of how they did, if there were</p> <p>11 testing involved, a record of attendance?</p> <p>12 A. We do keep record if somebody's taken the</p> <p>13 training, that's monitored, because they're required</p> <p>14 trainings. If you -- if there's a testing component,</p> <p>15 you receive, you know, a certificate of completion with</p> <p>16 that, assuming you passed the test or you retake the</p> <p>17 training. That's it.</p> <p>18 Q. Going back to the period of time January 1st</p> <p>19 to November 1st, 2020, when would reviews take place of</p> <p>20 members of the enterprise committee?</p> <p>21 A. I'm sorry? November?</p> <p>22 Q. January 1, 2018 --</p> <p>23 A. Yeah.</p> <p>24 Q. -- through November 1, 2020.</p> <p>25 A. Uh-huh.</p>	<p>Page 64</p> <p>1 midyear reviews of members of the enterprise committee?</p> <p>2 A. Very little. I would have the executive</p> <p>3 assistant of the CEO ensure that she set up meeting</p> <p>4 times for the CEO and the respective executive or</p> <p>5 enterprise member. I guess there probably could have</p> <p>6 been occasions where the CEO asked me for any feedback</p> <p>7 or thoughts, but I think those were very limited because</p> <p>8 our CEO was very plugged in and had his own perspectives</p> <p>9 on the strengths and opportunities of each of the</p> <p>10 enterprise members.</p> <p>11 Q. Would you provide any information to -- the</p> <p>12 CEO we're referring to at that point in time is Greg</p> <p>13 Carmichael, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And he's the one -- Greg Carmichael would</p> <p>16 perform these midyear reviews and the annual reviews</p> <p>17 during the time period that I'm referring to, January 1,</p> <p>18 2018 --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- through November 1, 2020; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And so with respect to -- and I asked you</p> <p>23 about the midyear reviews. Mr. Carmichael may ask you</p> <p>24 for some comments before a midyear review, it would</p> <p>25 depend; is that correct?</p>

<p>Page 65</p> <p>1 A. Yeah, or just any feedback or observations, 2 yeah. 3 Q. Would you provide any documentation to 4 Mr. Carmichael in preparation for any of the midyear 5 reviews of members in the enterprise committee? 6 A. No. Those were discussion based. 7 Q. Would you attend any of the midyear reviews? 8 A. No. 9 Q. Was there any record kept of the midyear 10 reviews? 11 A. Not that I'm aware of. I think we used to put 12 the dates in the system when the midyear reviews 13 occurred, but I'm not sure that is a requirement 14 anymore. 15 So it's just the, you know, the manager 16 setting up, I guess, it would be on their calendar when 17 the midyear reviews occurred. 18 Q. Other than that, there wouldn't be reports 19 generated from the midyear review; is that correct? 20 A. No. Nope. 21 Q. Would you ever meet with Mr. Carmichael or 22 discuss with Mr. Carmichael the results of any of the 23 midyear reviews of members of the enterprise committee? 24 A. I think only to the extent in my role as the 25 CHRO that Mr. Carmichael wanted me to, you know, follow </p>	<p>Page 67</p> <p>1 role as CHRO. 2 A. Uh-huh. 3 Q. My question is, would that request for you to 4 follow up with an individual or issues he wanted you to 5 work on them with, was that documented anywhere? Was 6 that done in writing? Was that the byproduct of just a 7 face-to-face meeting or discussion between you and 8 Mr. Carmichael? 9 A. Just a discussion. There wasn't any 10 documentation. 11 Q. Phil McHugh's midyear review with 12 Mr. Carmichael in 2019 was on August 15, 2019. Did you 13 have any discussions with Mr. Carmichael regarding that 14 review? 15 MR. CIOFFI: Objection. Compound question. 16 Are you asking him if it happened on August 15 and 17 did he have any discussions? 18 BY MR. SABA: 19 Q. I'm representing to you that he had a review, 20 midyear review with Mr. Carmichael on August 15th, 2019. 21 A. Uh-huh. 22 Q. Do you have any reason to contest that that 23 was the date of Mr. McHugh's midyear review with 24 Mr. Carmichael? 25 A. No. </p>
<p>Page 66</p> <p>1 up with an individual or, you know, help assess, you 2 know, progress if there's something being worked on 3 because in my role as CHRO, I was very responsible, 4 invested in the enterprise team's development and, you 5 know, getting -- getting accomplished from a skill set 6 or development perspective that they needed to. 7 Q. What do you mean follow up with an individual? 8 What would you do in that situation? 9 A. Oh, just if there was any feedback that, you 10 know, Mr. Carmichael wanted to make sure that the 11 executive, if they needed any help, or any assistance 12 with anything that, you know, in my role that I could 13 help facilitate. 14 Q. Were those -- strike that. 15 When you would have discussions with 16 Mr. Carmichael regarding any follow-up he wanted you to 17 do with an enterprise committee member following their 18 midyear review, would that be documented anywhere? 19 A. I'm sorry, could you repeat that question? 20 Q. Sure. You indicated that on occasion with 21 respect to the midyear reviews -- 22 A. Uh-huh. 23 Q. -- Mr. Carmichael may have you follow up with 24 certain members of the enterprise committee to see what 25 you could do to assist them or facilitate them in your </p>	<p>Page 68</p> <p>1 Q. Do you recall that being the date of 2 Mr. McHugh's midyear review with Mr. Carmichael? 3 A. Not the exact date, no. 4 Q. Did you have any discussions with 5 Mr. Carmichael regarding Phil McHugh's midyear review 6 with Mr. Carmichael on August 15, 2019? 7 A. Yes. 8 Q. What were those discussions? 9 A. Those discussions were related to the fact 10 that Greg wanted to talk to Phil about Phil's 11 interested -- Phil's interest in potentially being -- or 12 Phil's interest in being recommended by Greg to the 13 board to be a potential candidate for an emergency CEO 14 successor. 15 So he had that conversation with Phil. He 16 actually had the same conversation with Tayfun Tuzun at 17 that time. I don't know the exact date of that 18 conversation either. 19 Q. Anything else about that that you discussed 20 with Mr. Carmichael? 21 A. Not that I recall. 22 Q. When did you have this discussion with 23 Mr. Carmichael about Phil's interest in being the 24 emergency CEO and successor? 25 MR. CIOFFI: Objection. I'm confused by the </p>

<p>1 question. Did you mean to say with Mr. Carmichael 2 or with Mr. McHugh? 3 BY MR. SABA: 4 Q. Do you understand my question? 5 A. No. 6 Q. You indicated -- I asked you about what -- did 7 you have any conversations with Mr. Carmichael about his 8 midyear review with Mr. McHugh on August 15, 2019, you 9 said yes, you did. 10 A. Uh-huh. 11 Q. And I asked you what was the context of that 12 conversation, and you indicated it conveyed to you about 13 Phil's interest in being recommended to the board as the 14 emergency successor to being CEO; is that correct? 15 A. Yes. 16 Q. When did that conversation between you and 17 Mr. Carmichael occur about Phil's interest in being 18 recommended to the board as an emergency CEO and 19 successor to Carmichael? 20 A. I don't remember the exact date. I don't 21 recall it. 22 Q. Was that before the -- Mr. McHugh's annual 23 review with Mr. Carmichael on August 15, 2019 or after? 24 MR. CIOFFI: Objection. Again, just to 25 clarify the record, the August 15 was not an annual</p>	Page 69	<p>1 Mr. McHugh about his midyear review with Mr. Carmichael? 2 A. Phil approached me right after the period of 3 time we had an offsite strategic planning meeting in 4 Maryland. Phil approached me to talk about him. He 5 wanted to confirm with me what Greg had communicated to 6 him, and I did confirm that Greg did, as Greg 7 communicated to me, that in the case of a need for an 8 emergency successor, would Phil have an interest in 9 being recommended to the board? 10 Q. What else was said during that conversation? 11 A. I don't recall what else. I know that Phil 12 did ask me if I would support that, in terms of him 13 being, you know, if he's interested to be recommended to 14 the board as a potential emergency successor, so I told 15 him I supported that. 16 But it's not my decision. It's ultimately the 17 board's decision who they place as potential emergency 18 successors or permanent successors. Not my decision. 19 Q. Do you recall anything else about that 20 conversation? 21 A. I do not. 22 Q. Did you indicate that you would support Phil 23 McHugh as being an emergency successor as president and 24 CEO to Greg Carmichael? 25 A. I did not. I supported Greg recommending to</p>	Page 71
<p>1 review. It was a midyear review, right? 2 MR. SABA: Correct. 3 MR. CIOFFI: Okay. You said annual. 4 MR. SABA: Sorry. 5 THE WITNESS: I'm sorry, is it -- could you 6 repeat it? 7 MR. CIOFFI: Would you ask the question again, 8 please? 9 MR. SABA: Yes. 10 BY MR. SABA: 11 Q. My question was, the conversation you had with 12 Mr. Carmichael where you say he indicated that 13 Mr. McHugh was interested in being the emergency 14 successor -- 15 A. Uh-huh. 16 Q. -- did that occur before the midyear review on 17 August 15, 2019, or after the midyear review on 18 August 15, 2019? 19 A. I don't recall for sure. I know we had it 20 after. We may have had it before as well, but I can't 21 recall that specifically. 22 Q. Did you have any conversations with Phil 23 McHugh about his midyear review with Mr. Carmichael? 24 A. I did. 25 Q. When did you have a conversation with</p>	Page 70	<p>1 the board further consideration of Phil at the board's 2 decision being in that position as an emergency 3 successor. It's not my decision to make that. 4 Q. I'm not asking it's your decision. I'm just 5 asking if you supported Phil serving in that role? 6 MR. CIOFFI: Objection. Again, he's asked and 7 answered the question, support the recommendation, 8 but go ahead, you can answer. 9 THE WITNESS: It's not my decision to support 10 him or put him in that role. I supported what Greg 11 had indicated to him, Phil's interest to be 12 recommended by Greg to the board to be an emergency 13 CEO successor. 14 BY MR. SABA: 15 Q. In your opinion, was Phil an appropriate and 16 a -- excuse me -- an appropriate candidate for that 17 role? 18 A. For which role? 19 Q. Emergency successor? 20 A. As an emergency successor, yes. 21 Q. With respect to -- strike that. 22 At any time, did you have a conversation with 23 Mr. Carmichael during which he indicated that he 24 represented to Phil McHugh that he would want Phil to 25 succeed him in one to two years as president and CEO?</p>	Page 72

<p>1 A. No.</p> <p>2 Q. At any time during your conversations with</p> <p>3 Phil McHugh, did he indicate that he was interested in</p> <p>4 succeeding Greg in one to two years as president and</p> <p>5 CEO?</p> <p>6 A. No. Not that I recall.</p> <p>7 Q. At any time during your conversations with</p> <p>8 Phil McHugh, did you indicate to him that you were aware</p> <p>9 that Greg Carmichael stated that Greg wanted to leave in</p> <p>10 one to two years and that Phil would succeed him as</p> <p>11 president and CEO?</p> <p>12 A. No. I'm not aware of any such conversation.</p> <p>13 The context of the emergency successor discussions was</p> <p>14 around the fact that Greg may need, for personal</p> <p>15 reasons, to step out earlier than what he had planned,</p> <p>16 but never any specific timeline by which that would</p> <p>17 occur.</p> <p>18 Q. But it's your position during the offsite at</p> <p>19 the Inn at Perry's Cabin, you didn't communicate to Phil</p> <p>20 McHugh that you knew that Greg Carmichael stayed at the</p> <p>21 -- that Greg Carmichael wanted to leave in one to two</p> <p>22 years and that Phil would succeed him as president and</p> <p>23 CEO, correct?</p> <p>24 A. No.</p> <p>25 Q. You're saying no, that you did not state that</p>	<p>Page 73</p> <p>1 you knew that Tim Spence was not ready to succeed Greg</p> <p>2 as president and CEO, and that Tim would be well served</p> <p>3 by observing Phil as president and CEO?</p> <p>4 A. I'm sorry. Could you repeat all that again?</p> <p>5 Q. Correct. Yes.</p> <p>6 During your meeting with Phil McHugh at the</p> <p>7 offsite in Maryland, did you communicate to Phil that</p> <p>8 Tim Spence was not ready to succeed Greg as president</p> <p>9 and CEO, and that Tim Spence would be well served by</p> <p>10 observing Phil as president and CEO?</p> <p>11 MR. CIOFFI: Objection to the form. You may</p> <p>12 answer.</p> <p>13 THE WITNESS: I do not recall that. Because</p> <p>14 the discussion I was having with Phil was around</p> <p>15 emergency successor because those were the</p> <p>16 qualifications that Phil has. He definitely does</p> <p>17 not have the qualifications to be the CEO and</p> <p>18 president of this company.</p> <p>19 BY MR. SABA:</p> <p>20 Q. And why do you say that?</p> <p>21 A. Phil's qualifications -- I mean, he doesn't</p> <p>22 have the vision, kind of long-term strategy aspects to</p> <p>23 lead the company forward, to inspire people. What the</p> <p>24 emergency successor is, is somebody who can keep the</p> <p>25 lights on. Phil has a lot of experience with us. You</p> <p>Page 75</p>
<p>1 to Phil McHugh, correct?</p> <p>2 A. I'm sorry, what was the question again?</p> <p>3 Q. So let me rephrase the question again, so you</p> <p>4 understand what I'm saying.</p> <p>5 A. Yeah.</p> <p>6 Q. Is it your position that during the offsite at</p> <p>7 the Inn at Perry's Cabin in August of 2019, that you did</p> <p>8 not communicate to Phil McHugh that you knew Greg</p> <p>9 Carmichael had indicated to Phil that Greg wanted to</p> <p>10 leave in one to two years and that Phil would succeed</p> <p>11 him as president and CEO?</p> <p>12 A. I did not state that.</p> <p>13 Q. Why did Greg Carmichael believe that he might</p> <p>14 need an emergency successor and CEO?</p> <p>15 MR. CIOFFI: Objection. Lack of foundation.</p> <p>16 I mean, if you know.</p> <p>17 THE WITNESS: He --</p> <p>18 MR. CIOFFI: If you know.</p> <p>19 THE WITNESS: He communicated to me for</p> <p>20 personal reasons, potentially personal health</p> <p>21 reasons, but I don't know any more details than</p> <p>22 that.</p> <p>23 BY MR. SABA:</p> <p>24 Q. During your meeting with Phil McHugh at the</p> <p>25 Inn of Perry's Cabin, did you communicate to Phil that</p> <p>Page 74</p>	<p>1 know, we've always said he's a good manager, a competent</p> <p>2 manager, kind of like a caretaker is what an emergency</p> <p>3 successor is, and, you know, that's the -- the</p> <p>4 qualifications Phil has.</p> <p>5 It's kind of like, in a sports analogy, your</p> <p>6 starting quarterback goes down, you put your second</p> <p>7 stringer in there just to hope to keep the -- keep the</p> <p>8 lights on, keep the business as usual and kind of the</p> <p>9 status quo going.</p> <p>10 Q. At any point in time, did Phil McHugh indicate</p> <p>11 to you that he was interested in being the president and</p> <p>12 CEO of Fifth Third Bank?</p> <p>13 A. Not that I recall.</p> <p>14 Q. At any point in time did Phil McHugh indicate</p> <p>15 to you that he was only interested in being an emergency</p> <p>16 successor as president and CEO of Fifth Third Bank, but</p> <p>17 he did not want to be the president and CEO of Fifth</p> <p>18 Third Bank?</p> <p>19 MR. CIOFFI: Objection. A couple double</p> <p>20 negatives in there, but can you restate that?</p> <p>21 THE WITNESS: Could you restate it, please?</p> <p>22 BY MR. SABA:</p> <p>23 Q. At any point in time, did Phil McHugh indicate</p> <p>24 to you that he was only interested in being the</p> <p>25 emergency successor as president and CEO of Fifth Third</p> <p>Page 76</p>

<p>1 Bank, but otherwise was not interested in being the 2 president and CEO of Fifth Third Bank?</p> <p>3 A. The discussion we were having in Maryland was 4 around what Greg talked to him about previously, which 5 was about his interest in being recommended to 6 potentially serve as the emergency successor if Greg had 7 to step out earlier than planned.</p> <p>8 Q. Do you recall indicating to Phil McHugh during 9 the -- your offsite meeting with him in Maryland that 10 you were excited to see Phil in the role of president 11 and CEO, and that you would do anything to help Phil 12 succeed in that role?</p> <p>13 A. No. I remember having, again, as I testified 14 earlier, if I would support Phil in being recommended by 15 Greg and ultimately if the board considered Phil an 16 emergency successor. As with any enterprise member, I 17 would do anything I could do to support their 18 development and what, you know, they wanted to try to 19 achieve as goals.</p> <p>20 MR. CIOFFI: Counsel, we've been going well 21 past 90 minutes. I don't want to interrupt this 22 line of questions. Please continue it, but when 23 you're finished with this line of questioning, 24 let's take a break.</p> <p>25 MR. SABA: We can take a break right now.</p>	<p>Page 77</p> <p>1 referring to where you had the conversation with Phil 2 McHugh about his midyear review with Greg Carmichael; is 3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall that the conversation you 6 had with Phil McHugh was on August 18, 2019, that 7 evening?</p> <p>8 A. I believe it was the first night we were 9 there.</p> <p>10 Q. And with respect to that conversation you had 11 with Mr. McHugh, did you subsequently have conversations 12 about your Phil McHugh conversation with Frank Forrest?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you ever indicate to Frank Forrest that 15 Greg had communicated to Phil that he wanted Phil to 16 replace him or succeed him as president and CEO in one 17 to two years?</p> <p>18 A. I'm sorry, I don't understand the question. 19 Is it Phil or Frank that you're questioning?</p> <p>20 Q. My question is, did you share the information 21 from your conversation with Phil McHugh or about Phil 22 McHugh with Frank Forrest?</p> <p>23 A. I don't recall.</p> <p>24 Q. Specifically, did you share the information 25 that Greg Carmichael wanted Phil to succeed him as</p>
<p>Page 78</p> <p>1 MR. CIOFFI: No, finish it. Finish your line 2 of questions.</p> <p>3 MR. SABA: Why don't we go off for about five 4 minutes.</p> <p>5 MR. CIOFFI: Yeah, let's keep it tight so we 6 can -- I don't know how much you have.</p> <p>7 THE VIDEOGRAPHER: The time is 11:24 a.m. We 8 are going off the record.</p> <p>9 (A recess was taken from 11:24 a.m. to 10 11:43 a.m.)</p> <p>11 THE VIDEOGRAPHER: The time is 11:43 a.m. We 12 are back on the record.</p> <p>13 (Deposition Exhibit 5 is marked for 14 identification.)</p> <p>15 BY MR. SABA:</p> <p>16 Q. Mr. Shaffer, I've handed you what's been 17 marked as Exhibit Number 5, which should be Bates 18 stamped Fifth Third McHugh 197022 through 197033; is 19 that correct?</p> <p>20 A. It is correct.</p> <p>21 Q. Are you able to identify this document for me?</p> <p>22 A. This is a document that was prepared for 23 strategic planning offsite from August 18th through the 24 21st, 2019.</p> <p>25 Q. And this is the same offsite that you were</p>	<p>Page 80</p> <p>1 president and CEO within one to two years?</p> <p>2 A. I don't recall that, no.</p> <p>3 Q. Did you ever have a conversation with Tuzun 4 Tayfun (sic) about your conversation with Phil at the 5 offsite on August 18, 2019?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you ever indicate to Tuzun Tayfun that 8 Greg Carmichael had indicated that he would like Phil to 9 succeed him in one to two years as president and CEO?</p> <p>10 A. I'm sorry, can you repeat that, please?</p> <p>11 Q. Yes. Did you ever indicate to Tayfun Tuzun 12 that Greg had indicated that he wanted Phil to succeed 13 him as president and CEO within one to two years?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Did you ever indicate to Tayfun Tuzun that you 16 hoped that Phil had not recorded your conversation with 17 him at the Inn at Perry's Cabin on August 18, 2019?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did you ever have a conversation with Brian 20 Lamb regarding your conversation with Phil at the Inn at 21 Perry's Cabin on August 18, 2019?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Did you ever indicate to Brian Lamb that Greg 24 Carmichael had indicated that he wanted Phil to succeed 25 him as president and CEO within one to two years?</p>

<p>Page 81</p> <p>1 A. Not that I recall.</p> <p>2 Q. And with respect to all those questions, you</p> <p>3 indicated that you did not recall. Are you saying that</p> <p>4 those conversations never took place or as you sit here</p> <p>5 today, you can't recall one way or the other?</p> <p>6 A. I don't recall them ever taking place.</p> <p>7 Q. You indicated that you felt Phil is not</p> <p>8 qualified to be president and CEO; is that correct?</p> <p>9 A. That is correct.</p> <p>10 Q. When did you develop the opinion that Phil was</p> <p>11 not qualified to be president and CEO of Fifth Third</p> <p>12 Bank?</p> <p>13 A. Well, first of all, it's ultimately the</p> <p>14 board's opinion to determine whether Phil or any other</p> <p>15 candidate would be qualified to be the president and the</p> <p>16 CEO of Fifth Third Bank. From my perspective, Phil has</p> <p>17 a number of -- lack of qualifications to be in that</p> <p>18 role.</p> <p>19 First, as I testified earlier, he lacks the --</p> <p>20 to be able to develop a vision and implement a vision</p> <p>21 that would lead this company forward, inspire people.</p> <p>22 He lacks the strategic capability to do that as well.</p> <p>23 Obviously we had to hire Oliver Wyman, the board did, in</p> <p>24 2010 or '11, and ultimately we hired Tim Spence because</p> <p>25 Tim brought that strategic capability. We didn't have</p>	<p>Page 83</p> <p>1 Secondly, the only two real high level --</p> <p>2 higher level people I ever remember Phil hiring</p> <p>3 externally was a gentleman by Ruben Rashty in our wealth</p> <p>4 and asset management business, and Jamie Cahn, who ran</p> <p>5 our institutional business. And in both of those cases,</p> <p>6 those were disasters. We had to ask those individuals</p> <p>7 to leave the company.</p> <p>8 Another good example of Phil's lack of talent,</p> <p>9 skills, when Phil ran the consumer bank, Mike Butera was</p> <p>10 our retail leader. I know Greg talked to Phil a number</p> <p>11 of times about Mike not being capable of leading that</p> <p>12 group in the way we needed to. Phil never took any</p> <p>13 action on that.</p> <p>14 And it wasn't until Tim Spence took over the</p> <p>15 consumer bank that Tim took action and actually didn't</p> <p>16 want to get rid of Mike from the company. Mike has a</p> <p>17 lot of good skills and actually, and to this day, Mike</p> <p>18 is with Fifth Third and has a big role, but it took Tim</p> <p>19 to really take that action to get it done. Phil just</p> <p>20 never really had the ability to do the hard coaching,</p> <p>21 deliver the tough feedback, to really improve anyone's</p> <p>22 performance.</p> <p>23 Q. And these thoughts about Phil, when did you</p> <p>24 develop those?</p> <p>25 A. Over time, just based on my experiences with</p>
<p>Page 82</p> <p>1 anybody in the company, excuse me, that had that</p> <p>2 strategic capability, including Phil.</p> <p>3 Phil lacks technology skills and depth of</p> <p>4 knowledge. He lacks Fintech skills and knowledge of</p> <p>5 that industry and what that industry brings to banking</p> <p>6 competition. He lacks in-depth knowledge of our peers</p> <p>7 and our competitors from a -- doesn't understand, have a</p> <p>8 lot of knowledge of their business model, their</p> <p>9 strategies, their management teams. I've -- also feel</p> <p>10 that Phil -- that Phil lacks the emotional intelligence</p> <p>11 and executive presence to be in that role as well. It's</p> <p>12 fairly easy to get him riled up and flustered. I</p> <p>13 certainly wouldn't want to put somebody like that in</p> <p>14 front of shareholders, potential investors, analysts,</p> <p>15 rating agencies.</p> <p>16 And then from a talent perspective, that's</p> <p>17 definitely not a strength of Phil's. And I've plenty of</p> <p>18 examples where I could talk about on the talent side.</p> <p>19 I'll give a few here.</p> <p>20 One is, if you look at our current management</p> <p>21 committee membership, which is the top 100 plus in the</p> <p>22 company, there's not a single person on that management</p> <p>23 committee that Phil McHugh hired. To me, 34 years at</p> <p>24 the bank, not having anybody at that level, I think is a</p> <p>25 tall tale (sic) sign.</p>	<p>Page 84</p> <p>1 him. We were executives together at the bank. We were</p> <p>2 in a lot of meetings together, a lot of situations,</p> <p>3 worked on a lot of things together, and of course being</p> <p>4 the chief human resources officer for a period of time,</p> <p>5 you know, observing and looking at Phil closer from that</p> <p>6 perspective.</p> <p>7 Q. Did you feel that way as of January 1 of 2019?</p> <p>8 A. Yes.</p> <p>9 Q. Did you feel that way as of January 1, 2018?</p> <p>10 A. Yeah. I've always had those views, that Phil</p> <p>11 doesn't have the qualifications to be the CEO or</p> <p>12 president of this company.</p> <p>13 Q. But you did feel he had the qualifications to</p> <p>14 be the emergency successor, president and CEO; is that</p> <p>15 right?</p> <p>16 A. I did.</p> <p>17 Q. And what characteristics did he have that made</p> <p>18 him appropriate to be the emergency successor president</p> <p>19 and CEO?</p> <p>20 A. To be the emergency, as I testified earlier,</p> <p>21 you know, Phil could keep the lights on. He has a lot</p> <p>22 of experience with the bank. He could keep the team</p> <p>23 together. He could keep the business as usual,</p> <p>24 operations running, keep the status quo and really serve</p> <p>25 in that caretaker kind of capacity for, you know, a</p>

<p style="text-align: right;">Page 85</p> <p>1 short period of time until a permanent successor was 2 identified.</p> <p>3 And, again, it's not my decision of who is the 4 emergency successor or the permanent successor, it's the 5 board's, but helping the board administer, you know, 6 those processes, providing them with information, our 7 emergency succession plan actually has a bunch of steps 8 in it that, you know, happen in case, you know, our 9 current CEO gets sick, gets killed, commits fraud, you 10 know, whatever. They get enacted very quickly so we 11 have a very defined mature process that the board 12 oversees and leads.</p> <p>13 The last step of that process is for the board 14 to initiate the search for a permanent successor. So 15 that would be viewed as a very short period of time and 16 Phil, I believe, at that time had those capabilities to 17 do that.</p> <p>18 (Mr. McHugh exits the room.) 19 (The following testimony is Confidential -- 20 Subject to Protective Order.)</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Can you read that text message, please. 2 A. "Heading to Chicago for some productive 3 conversations and problem resolution. I'll try to solve 4 the credit issues while I'm up there as well." 5 Q. And Frank Forrest responds, "You need to do 6 that. We need one capable executive, not three, 7 overseeing MB. That would be a great start. Make it 8 happen." 9 Do you see that? Did I read that correctly? 10 A. Uh-huh. 11 Q. What is MB? 12 A. It is MB Financial. It's a financial 13 institution in Chicago that we acquired. 14 Q. When did Fifth Third acquire MB? 15 A. 20 -- I'm trying to figure closing -- I can't 16 remember if it's 2018 or 2019, I think. I can't 17 remember specifically. 18 Q. And what were the problems you were having at 19 MB at that time in October 2019? 20 A. I can't remember specifically. I think it was 21 really related to around integration aspects and 22 particularly in the credit area. You know, we bought MB 23 Financial for the middle market bank -- middle market 24 business and the retail business that they had. On the 25 credit side, I think what was happening at that time was</p>
<p style="text-align: right;">Page 86</p> <p>1 * * * 2 (Deposition Exhibit 6 is marked for 3 identification.) 4 BY MR. SABA: 5 Q. Mr. Shaffer, I've handed you what's been 6 marked as Exhibit Number 6. Fifth Third McHugh 0213203; 7 do you see that? 8 A. I do. 9 MR. CIOFFI: Counsel, before you go any 10 further, by way of objection, this again is an 11 attorneys' eyes only document. Only part of it 12 should really be public in use. Some of it has 13 personal confidential medical information. Again, 14 we'll ask that this get redacted before it goes 15 into the record of this deposition. Go ahead. 16 BY MR. SABA: 17 Q. Mr. Shaffer, this is a text message exchange 18 between you and Frank Forrest; is that correct? 19 A. Uh-huh, it is correct. 20 Q. And I'm going to refer you down to your text 21 message on October 11, 2019 at 10:51 a.m.; do you see 22 that? 23 A. 10:51, you said? 24 Q. Yes. 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 88</p> <p>1 we had, you know, lots of views and cooks in the kitchen 2 in terms of how they wanted to run that structure, and 3 we just needed to make sure that we brought the right 4 stability and so forth to it. 5 Q. And in response to Frank Forrest's text 6 message of, "You need to do that. We need one capable 7 executive, not three overseeing MB. That would be a 8 great start. Make it happen." How did you respond? 9 A. "I already did. I met with Greg earlier this 10 week and told him Phil is the guy. And that Lars needs 11 to work through Phil when necessary in Chicago." 12 Q. And when you refer to "Greg," that's Greg 13 Carmichael; is that right? 14 A. That's right. 15 Q. And when you refer to "Phil," that's Phil 16 McHugh being the guy; is that correct? 17 A. That's correct. 18 Q. And was Phil made the guy to oversee MB? 19 A. Well, I think at that time, as I recall, Phil 20 leading the regions, he was, you know, he was doing his 21 job and making sure we brought stability and the 22 appropriate communication and collaboration. So -- and 23 the right business processes. So again, he's just doing 24 his job in that role. He was leading the region so MB 25 was a big acquisition for our regions.</p>

<p>Page 89</p> <p>1 Q. Well, clearly he was the capable executive 2 that you saw overseeing MB; is that right?</p> <p>3 A. Yeah. No one ever said Phil wasn't a 4 competent manager.</p> <p>5 Q. Mr. Shaffer, what are the talent decks?</p> <p>6 A. What are you referring to?</p> <p>7 Q. Have you heard the phrase "talent deck"?</p> <p>8 A. Yes.</p> <p>9 Q. When I use the phrase "talent deck," what do 10 you understand that to mean?</p> <p>11 A. Well, what I assume you're referring to is the 12 talent decks that we use of the enterprise members for 13 the board of directors.</p> <p>14 Q. How were they used?</p> <p>15 A. Information that the board, you know, wants or 16 needs is provided to them.</p> <p>17 Q. Why is that information provided to the board?</p> <p>18 A. It's the board's responsibility to oversee our 19 top-level talent management and succession planning 20 processes for the enterprise level. So it's a key 21 responsibility if -- you know, in terms of succession 22 planning, particularly as it relates to CEO and 23 presidents, the most critical thing the board does. We 24 have regulatory requirements that we have to have a 25 sound talent management succession planning process in</p>	<p>Page 91</p> <p>1 (The previous testimony is Confidential -- 2 Subject to Protective Order.) 3 (Mr. McHugh enters the room.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. What was your role with respect to the talent 6 decks?</p> <p>7 A. You know, an administrative role in terms of 8 ensuring that they got prepared, that they reflected 9 accurately the information that the board, you know, has 10 communicated then or previously, and any other request 11 that the board might have to put in. 12 (Deposition Exhibit 7 is marked for 13 identification.)</p> <p>14 BY MR. SABA:</p> <p>15 Q. Mr. Shaffer, you've been handed what's been 16 marked as Exhibit Number 7. It's Bates stamped Fifth 17 Third McHugh 005483 through 005515; is that correct?</p> <p>18 A. What did you say the last number was?</p> <p>19 Q. It's Fifth Third McHugh 005515.</p> <p>20 A. Yes.</p> <p>21 Q. Can you identify Exhibit Number 7 for me, 22 please?</p> <p>23 A. Talent Management Update December 2018.</p> <p>24 Q. And with respect to this particular -- and 25 strike that.</p>
<p>Page 90</p> <p>1 place for the highest levels of the company, and the 2 board oversees that. 3 * * * 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 92</p> <p>1 Is this what you would refer to as the talent 2 deck?</p> <p>3 A. As it relates to the board, yes.</p> <p>4 Q. And with respect to this particular talent 5 deck, December 2018, what involvement did you have in 6 the creation of this talent deck?</p> <p>7 A. I would have had ultimate administrative 8 oversight and responsibility for preparing the 9 information to present to the board that they expected 10 to see and wanted to see.</p> <p>11 Q. Explain to me the process as to how the talent 12 deck is created?</p> <p>13 A. Well, as it relates to 2018, I'll speak to 14 since that document's in front of me, it would be 15 working with a couple of my human capital people to 16 prepare it. In this case in 2018, we would start with 17 the prior year deck and update it. We would add any 18 relevant information that we thought the board wanted or 19 needed related to the overarching human capital aspects 20 of our company, as well as then some specific 21 information on the enterprise team around pipelines, as 22 well as individual development plans which are included 23 at the back of this document, which were documents that 24 were generally prepared by the executive and their 25 senior HR business partners.</p>

<p>Page 93</p> <p>1 Q. When you say "we" would add information, who's</p> <p>2 we?</p> <p>3 A. Well, I would add information as my human</p> <p>4 capital, a couple folks I worked with that put this</p> <p>5 together, we would think about, you know, is there</p> <p>6 anything major going on in the company from a human</p> <p>7 capital perspective or the environment that's important.</p> <p>8 A lot of this is just factual information on time lines</p> <p>9 that we use for our talent approach or just continued</p> <p>10 awareness. It's results of, you know, talent wins,</p> <p>11 external hires, promotions we've had during the year, so</p> <p>12 it's just adding current information to the document</p> <p>13 from the prior year.</p> <p>14 Q. Who are those people from human capital when</p> <p>15 you refer to we?</p> <p>16 A. Nancy Pinckney and Liz McKay.</p> <p>17 Q. Anybody else?</p> <p>18 A. Well, as I said, these individual development</p> <p>19 plans in the back for each executive would generally</p> <p>20 have been prepared by the executive and their senior HR</p> <p>21 business partners which could be a multiple group of</p> <p>22 people.</p> <p>23 Q. What is Greg Carmichael's involvement in the</p> <p>24 talent deck creation process?</p> <p>25 A. I would ask for input from Greg if</p>	<p>Page 95</p> <p>1 year.</p> <p>2 (Deposition Exhibit 8 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, I've handed you what's been</p> <p>6 marked as Exhibit Number 8, Fifth Third McHugh 006380.</p> <p>7 Can you identify that for me, please?</p> <p>8 A. I'm sorry, could you repeat the number again?</p> <p>9 Q. Exhibit Number 8, Fifth Third McHugh 006380;</p> <p>10 do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Can you identify that?</p> <p>13 A. I do, yeah.</p> <p>14 Q. What is this document?</p> <p>15 A. This is an email from me, September 3, 2019 to</p> <p>16 Charlie King.</p> <p>17 Q. And what does the email indicate?</p> <p>18 A. I'm sorry, what's the question?</p> <p>19 Q. What does this email indicate?</p> <p>20 A. This email is to Charley King, who's the lead</p> <p>21 partner from our compensation -- external independent</p> <p>22 compensation consulting firm FW Cook, and I was sending</p> <p>23 him a couple documents that I would like him to review</p> <p>24 and provide me with any, you know, best practices</p> <p>25 feedback on what others do, because he has extensive</p>
<p>Page 94</p> <p>1 there's anything from an overall human capital</p> <p>2 perspective that he would like to see reflected prior to</p> <p>3 us starting the drafting process, you know, and if there</p> <p>4 was anything like that, we would certainly think about</p> <p>5 considering -- or we would add it or build it in.</p> <p>6 Obviously he has more direct discussions with the board,</p> <p>7 so he has that perspective that they might want in here</p> <p>8 as well.</p> <p>9 And then he would review, you know, final</p> <p>10 draft before I would send out a draft version to the</p> <p>11 lead independent director as well as the head of the</p> <p>12 human capital compensation committee to get any feedback</p> <p>13 they have on changes, additions, deletions before it</p> <p>14 would get sent out to the full board for the actual</p> <p>15 meeting.</p> <p>16 Q. When would the process start each year to</p> <p>17 create the new talent deck?</p> <p>18 A. Roughly, you know, maybe two months, a month</p> <p>19 or two ahead. Probably two months ahead of the actual</p> <p>20 meeting, which always was like mid -- mid or a little</p> <p>21 bit later than mid-December.</p> <p>22 Q. So two months or more ahead, we're talking</p> <p>23 about sometime in September, October?</p> <p>24 A. Probably October. I doubt if we ever started</p> <p>25 in September, but I can't speak specifically for each</p>	<p>Page 96</p> <p>1 experience in the human capital and compensation area</p> <p>2 with peers and other large public companies.</p> <p>3 Q. And to be specific, you sent Charley King the</p> <p>4 final talent deck from 2018; is that correct?</p> <p>5 A. According to the title on this here as an</p> <p>6 attachment.</p> <p>7 Q. And you sent him the 2018 Break The Glass</p> <p>8 Toolkit; is that correct?</p> <p>9 A. Same -- same answer.</p> <p>10 Q. And you indicate to him you'll be covering</p> <p>11 these with the full board in December; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. And you also wanted to discuss any insight he</p> <p>14 could provide on CEO succession processes; is that</p> <p>15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. Did you have your meeting with Charley King on</p> <p>18 September 16, 2019?</p> <p>19 A. I know I met with him. I'm not sure of the</p> <p>20 exact date.</p> <p>21 Q. Did you have the meeting where you discussed</p> <p>22 with Charley King his feedback regarding the 2018 talent</p> <p>23 deck?</p> <p>24 A. I did.</p> <p>25 Q. What happened during that meeting?</p>

<p>Page 97</p> <p>1 A. So the context here is me as the chief human 2 resources officer, I'm trying to, you know, utilize all 3 my available resources to help with the talent -- 4 executive talent management succession processes. 5 Charley has a lot of view and visibility, like I had 6 testified earlier, into other companies. He reviewed 7 both documents. You know, he didn't have -- my 8 recollection is he didn't have a lot of substantive 9 comments other than he thought the documents looked 10 really good.</p> <p>11 I'm sure we'll get into this. The reason I 12 was doing this is in 2019 was trying to take multiple 13 documents and put them into one place for the ease of 14 the board to review and have their discussion about the 15 talent management, the executives and succession.</p> <p>16 Q. Did he provide any specific feedback or 17 recommendations?</p> <p>18 A. I don't recall that happening.</p> <p>19 Q. What insight did he provide regarding CEO 20 succession processes?</p> <p>21 MR. CIOFFI: Objection. Asked and answered. 22 Go ahead.</p> <p>23 THE WITNESS: I don't recall any specific 24 feedback he provided on that.</p> <p>25 BY MR. SABA:</p>	<p>Page 99</p> <p>1 and assessment, as well as to, you know, bring the 2 conversations together, because there's a lot of overlap 3 in terms of talking about the talent management of the 4 enterprise team and succession planning for all the 5 executive roles as well as the CEO and president of the 6 bank and the emergency -- potential emergency successor 7 candidates.</p> <p>8 Q. So would that start with a meeting between you 9 and your team? How would that initially begin?</p> <p>10 A. So I did have a meeting with Nancy and Liz. 11 It was in my office. And we did a whiteboard session 12 because I wanted to kind of look at these documents that 13 we had in place and really focus on, initially, early on 14 in the process of the conceptual framework and structure 15 of the documents, the categories of information we're 16 carrying over, you know, the names of boxes, things like 17 that, to put in the one document going forward for the 18 board.</p> <p>19 Q. How long did that meeting last?</p> <p>20 A. I don't recall.</p> <p>21 Q. Who conducts the meeting?</p> <p>22 A. What do you mean?</p> <p>23 Q. Who runs the meeting? Who's operating the 24 whiteboard?</p> <p>25 A. I was up at the whiteboard.</p>
<p>Page 98</p> <p>1 Q. Referring specifically to the creation of the 2 2019 talent deck, what would have been the next step in 3 the process after your meeting with Charley King?</p> <p>4 A. Well, what I did in 2019 in the October time 5 frame, again, worked with two members of my human 6 capital team to begin to prepare a draft of -- or drafts 7 of the document that would ultimately go to the board in 8 December for their discussion.</p> <p>9 Q. And how would you and your team work to 10 prepare a draft for the talent deck, what specifically 11 would you do?</p> <p>12 A. I'm sorry, I missed the beginning of that.</p> <p>13 Q. Yes, how would you -- you mentioned your team 14 would work to prepare a draft of the talent deck. How 15 would that work? What specifically would your team do?</p> <p>16 A. So 2019, again, as I testified earlier, we had 17 a couple different documents out there. We had the 18 Break the Glass toolkit, which was a specific document 19 used prior to 2019 related to emergency CEO succession 20 planning. That typically was presented and reviewed 21 with the board in June or September of the -- during the 22 year -- and we also had a separate talent management 23 deck, of which you provided me a copy of the 2018 one 24 earlier. I wanted to take those two documents and 25 combine them into one for the ease of board discussion</p>	<p>Page 100</p> <p>1 Q. And how are you communicating the information 2 that you want inserted into the talent deck?</p> <p>3 A. At that meeting?</p> <p>4 Q. Yes.</p> <p>5 A. Well, again, we were kind of focused on the 6 conceptual structure and framework of the documents, so 7 we were just, you know, I was whiteboarding up what, you 8 know, various topics and so forth we could have in 9 there, how the talent cards would look, and type of 10 information that, based on all my conversations and 11 discussions I've been in with the board, thought would 12 be responsive to what they are looking for in a one-stop 13 document.</p> <p>14 (Deposition Exhibit 9 is marked for 15 identification.)</p> <p>16 BY MR. SABA:</p> <p>17 Q. Can you identify Exhibit 9 for me, please?</p> <p>18 A. It's an email from Elizabeth McKay to me 19 copying Nancy Pinckney and Paula Hennard.</p> <p>20 Q. Paula Hennard is your assistant; is that 21 correct, or was your assistant?</p> <p>22 A. She was and is my executive assistant.</p> <p>23 Q. Exhibit 9 is Bates stamped Fifth Third McHugh 24 006048; is that correct?</p> <p>25 A. That is correct.</p>

<p>Page 101</p> <p>1 Q. And what does that email indicate?</p> <p>2 MR. CIOFFI: Objection. The document speaks</p> <p>3 for itself. Do you want him to read it into the</p> <p>4 record or what?</p> <p>5 BY MR. SABA:</p> <p>6 Q. Do you recall receiving this email marked as</p> <p>7 Exhibit 9?</p> <p>8 A. I don't specifically recall receiving it, no.</p> <p>9 Q. Okay. The email sent to you a current draft</p> <p>10 of the talent deck dated October 25, 2019; is that</p> <p>11 correct?</p> <p>12 A. I'm sorry, repeat that date?</p> <p>13 Q. October 25, 2019?</p> <p>14 A. Correct.</p> <p>15 Q. This was the talent deck that was created as a</p> <p>16 result of the whiteboard meeting; is that right?</p> <p>17 A. A first draft probably, yeah.</p> <p>18 Q. What would be the process after you received</p> <p>19 the first draft of the talent deck?</p> <p>20 A. Well, that particular year in 2019, again, I</p> <p>21 was solely focused on the early drafts. I'm looking at</p> <p>22 the conceptual structure and format of the document. I</p> <p>23 was not worried about any details, any words and boxes</p> <p>24 and so forth. I was just trying to get to the point</p> <p>25 where I was comfortable with the overall structure and</p>	<p>Page 103</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. Do you have any reason to believe that</p> <p>3 Exhibit 10 was not the document that was emailed to you</p> <p>4 by Elizabeth McKay on October 25, 2019?</p> <p>5 A. I don't have any reason to believe, but,</p> <p>6 again, I can't say that this document was attached to</p> <p>7 that email.</p> <p>8 Q. Do you recall a different document being</p> <p>9 attached to that email?</p> <p>10 A. I do not recall. No. As I indicated, I</p> <p>11 didn't recall the email.</p> <p>12 Q. Have you seen Exhibit 10 before?</p> <p>13 A. Yes.</p> <p>14 Q. When would you have seen Exhibit 10?</p> <p>15 A. As part of the drafting process.</p> <p>16 Q. If I can refer you to Fifth Third McHugh</p> <p>17 006955.</p> <p>18 A. 6955?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. Can you identify that document for me?</p> <p>22 A. It's entitled, "Workforce of the Future Five</p> <p>23 Generations in the Workplace Fifth Third Bank."</p> <p>24 Q. Was this document part of the 2018 talent</p> <p>25 deck?</p>
<p>Page 102</p> <p>1 format.</p> <p>2 (Deposition Exhibit 10 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, you've been handed Exhibit</p> <p>6 Number 10, which is Bates stamped Fifth Third McHugh</p> <p>7 006943 through Fifth Third McHugh 006989. Do you see</p> <p>8 that?</p> <p>9 A. What's -- I didn't get the last numbers again.</p> <p>10 Q. 006989; is that correct?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. Can you identify Exhibit 10 for me, please?</p> <p>13 A. It's a draft dated October 25, 2019 of</p> <p>14 the Executive Talent Management Succession Plan Update.</p> <p>15 Q. Which is what we've been referring to as the</p> <p>16 talent deck; is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. This is the document that would have been</p> <p>19 emailed to you by Elizabeth McKay on October 25th; is</p> <p>20 that correct?</p> <p>21 A. I can't specifically say that this was the</p> <p>22 document that was in that email, no.</p> <p>23 Q. The attachments on Exhibit 9 refer to draft</p> <p>24 talent management update 2019, October 25, 2019; is that</p> <p>25 correct?</p>	<p>Page 104</p> <p>1 A. I don't recall. I could go back and look, but</p> <p>2 I don't recall.</p> <p>3 Q. You can go ahead and look.</p> <p>4 A. It was not.</p> <p>5 Q. Who made the decision to add in the Workforce</p> <p>6 of the Future Five Generations in the Workforce Fifth</p> <p>7 Third Bank into the talent deck for 2019?</p> <p>8 A. I don't recall specifically who made the</p> <p>9 decision. Again, as Nancy, Liz, and I were</p> <p>10 whiteboarding and thinking about information that's</p> <p>11 relevant from a human capital perspective just as data</p> <p>12 points, that might have been the reason we added it; I</p> <p>13 don't know.</p> <p>14 Q. Why would this information be relevant as a</p> <p>15 data point?</p> <p>16 A. It's just a data point to show the</p> <p>17 demographics of our workforce.</p> <p>18 Q. By age?</p> <p>19 A. From -- well, from a generation perspective.</p> <p>20 Q. Which is essentially showing the workforce by</p> <p>21 age, correct?</p> <p>22 A. It has the year range in here, but it</p> <p>23 wasn't -- didn't have anything to do with age. Again,</p> <p>24 it's just showing the demographics across the different</p> <p>25 generations.</p>

<p>Page 105</p> <p>1 Q. And what is the significance of showing 2 different generations in the workforce? 3 A. Again, it's just a data point, you know, as 4 with any company, you know, the different generations 5 have, you know, different work -- potential different 6 work preferences and how they interact and so forth 7 together but, again, it's not age based, it's just 8 informational purposes here. 9 Q. Well, it's age based because each generation 10 represents a different age group, correct? 11 A. Sure. 12 Q. Referring you on Exhibit Number 10 to Fifth 13 Third McHugh 006963. 14 A. 6963? 15 Q. Can you identify that document for me, please? 16 A. It's Lars Anderson's talent card. 17 Q. And that's what you would refer to these 18 profiles of each enterprise committee member as a talent 19 card for them; is that correct? 20 A. Yes. 21 Q. And with respect to using Lars Anderson as an 22 example, it provides his age; is that correct? 23 A. It does. 24 Q. And the age of the various members of the 25 enterprise committee was not included in the 2018</p>	<p>Page 107</p> <p>1 card? 2 MR. CIOFFI: Objection. Lack of foundation 3 that anything necessitated it, but if you know. 4 THE WITNESS: No, nothing did necessitate it. 5 It was just, again, kind of looking at the holistic 6 aspects of each individual and, you know, what type 7 of information, you know, we could include. So 8 nothing necessitated it. 9 BY MR. SABA: 10 Q. So you said, you know, wherever anybody goes 11 they have to provide their age, like to the doctor; is 12 that right? 13 A. Not every place we go, but every form you fill 14 out for driver's license, doctors, you know, whatever, 15 we're always asked to add our age, date of birth. 16 Q. So when employees apply for a job at Fifth 17 Third, are they required to give their age? 18 A. I don't know. No, I don't believe so. No. 19 And we don't -- we have policies that we do not 20 discriminate against age in terms of the hiring process, 21 promotion process, or anything like that. 22 Q. Right. You're not going to include age in 23 anything related to employment, hiring, or advancement, 24 are you? 25 A. Sorry. Repeat that?</p>
<p>Page 106</p> <p>1 version of the talent deck, was it? 2 A. May I look again? 3 Q. Please do. 4 A. It was not. 5 Q. Who decided that age information for each 6 member of the enterprise committee should be added to 7 the 2019 talent deck? 8 A. I mean, ultimately I would have decided to 9 include that. 10 Q. Why did you decide to include age to the 2019 11 version of the talent deck? 12 A. It's just simple biographical information, no 13 different than where someone went to college. You know, 14 there's no other reason other than it included as 15 biographical information. Age is not a secret. All of 16 our executive team is -- has their age published in our 17 annual report every year, which is publicly available. 18 Again, that's biographical information in there. 19 And as we all know, no matter where we go, 20 doctor, you know, one of the first things we always have 21 to add to something we're filling out is the date of 22 birth or age, so it's just simple biographical 23 information. 24 Q. What changed between 2018 and 2019 that 25 necessitated including age as a factor on each talent</p>	<p>Page 108</p> <p>1 Q. Specifically, Fifth Third is not going to have 2 an employee candidate include their age on an 3 application because you're not supposed to include age 4 as a factor; isn't that right? 5 MR. CIOFFI: Objection. Lacks foundation. 6 But if you can answer. 7 THE WITNESS: Can you repeat that, please? 8 BY MR. SABA: 9 Q. Yes. When an employee candidate applies for a 10 job at Fifth Third Bank, they're not going to provide 11 their age on that application, are they? 12 A. Right. 13 Q. Because age is not supposed to be used as a 14 factor related to employment, is it? 15 A. That's correct. 16 Q. Okay. 17 A. And age was not used as a factor here for 18 anything other than a biographical piece of information. 19 Q. But you did include it for the board of 20 directors to look at with respect to these candidates, 21 correct? 22 A. Yeah. Just as a piece of biographical 23 information. No different than what is in our annual 24 report. 25 Q. Referring again to Fifth Third McHugh 006963,</p>

<p>Page 109</p> <p>1 and using as an example the talent card for Lars 2 Anderson again, you also added a category of leader 3 capabilities under talent information; is that correct? 4 A. Correct. 5 Q. In fact, the whole category of talent 6 information was added, correct? 7 A. The performance ratings I don't believe was 8 new. 9 Q. You can go ahead and refer back to the 2018 10 talent deck so you can compare it. 11 A. Yeah. Yeah, performance rating was not new. 12 Key strengths and opportunities was not new. We had 13 information in '18 on successor candidates and emergency 14 successors for these roles. So not all of it. 15 Q. Which parts were new? 16 MR. CIOFFI: Objection. The document speaks 17 for itself. The two documents. Did you notice 18 anything else in your review? 19 THE WITNESS: That was new or -- 20 MR. CIOFFI: Yeah. 21 THE WITNESS: I'm sorry, your question, any 22 new items? 23 BY MR. SABA: 24 Q. Let's go back again. 25 A. Yeah.</p>	<p>Page 111</p> <p>1 A. The manager, CEO. 2 Q. In this case, it would be Greg Carmichael with 3 respect to every member of the enterprise committee? 4 A. Correct. 5 Q. When would that information be communicated to 6 you? 7 A. Well, it's -- I believe we include that in the 8 performance -- it's in the performance management 9 system. So it's in everybody's individual performance 10 review each year. So we would have probably, from an HR 11 perspective, picked up whatever the prior year one -- 12 prior year ratings were, and then Greg would have 13 reviewed those, obviously. 14 Q. You're saying these are from 2018, is that 15 right, the end of 2018? That's why they -- how they 16 ended up in 2019? 17 A. Yeah, I mean, as it relates to the very first 18 draft, I mean, I assume -- I wasn't responsible for 19 going to get that information, but I assume Liz would 20 have picked it up from the prior year performance 21 review. 22 Q. Referring specifically to Fifth Third McHugh 23 006968, I'm on Exhibit 10 again. 24 A. Yes. 25 Q. Can you identify that for me, please?</p>
<p>Page 110</p> <p>1 Q. And start looking under the talent 2 information. The categories under leader capabilities, 3 strength and effective opportunity, that was all added, 4 correct? 5 A. Other than the rating, PM rating, that was in 6 last year, the prior year document. 7 Q. I'm -- well, right now I'm just referring to 8 the right side of the talent information box -- 9 A. Yeah, that's new, yeah. 10 Q. -- under leader capabilities. That was all 11 new, correct? 12 A. Added into this document, yes. 13 Q. And who decided to add that in? 14 A. Again, at the end of the day, it would have 15 probably been me. It would have been me. 16 Q. Where did you get that information from? 17 A. So that's a common framework we utilize for 18 all of our employees across the company, those four 19 specific leader capabilities, and we assess whether 20 people have strengths, are effective, or have 21 opportunities in those areas. 22 Q. And who decides that? 23 A. The manager. 24 Q. And with respect to these members of the 25 enterprise committee, who would decide that?</p>	<p>Page 112</p> <p>1 A. Phil McHugh's talent card. 2 Q. And referring to the talent information under 3 leader capabilities -- 4 A. Uh-huh. 5 Q. -- it has under act like an owner, be a great 6 coach, create connections, lead with ability, those are 7 all strengths for Phil McHugh; is that right? 8 A. I wasn't paying attention to any of the 9 details. This was a first draft of, you know, multiple 10 documents we were bringing together, and I was looking 11 at the conceptual structure and framework of the 12 document. So I wasn't paying any attention to the 13 accuracy or even what was in the boxes of this -- in the 14 early drafts. 15 Q. Yeah, I'm just confirming that's what it 16 indicates there; is that right? 17 A. It does indicate it in this draft, yes. 18 Q. And strength would be the highest ranking; is 19 that correct? 20 A. Correct. 21 Q. Under potential next positions, it lists 22 president, ready now, and CEO, one to two years; do you 23 see that? 24 A. Yes. 25 Q. Who would put that in there?</p>

<p>Page 113</p> <p>1 A. I don't know. I wasn't responsible for 2 creating the documents. You know, that would have been 3 Liz putting information in there. So if I would have 4 been paying attention to anything other than structure 5 and format, I would have realized that that was a 6 complete mistake. Obviously somebody with moderate 7 potential, which is what Phil obviously -- has always 8 demonstrated -- that would not be a president or CEO 9 successor. So I don't know if it's a miscommunication, 10 a clerical error on Liz's part, she copied and pasted 11 something wrong from other documents, but that's an 12 error.</p> <p>13 Q. Wasn't this document created as a result of 14 the whiteboard meeting in your office?</p> <p>15 A. Yeah, the structure and format was, yes. But 16 we didn't go through the details of any of the boxes. I 17 wasn't ready to do that yet. I needed to make sure we 18 got the right format and structure down.</p> <p>19 Q. Liz McKay indicated that you provided that 20 information to list Phil McHugh as president ready now 21 and CEO in one to two years?</p> <p>22 MR. CIOFFI: Objection.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Go ahead. Is it your position that she 25 testified wrongly or incorrectly?</p>	<p>Page 115</p> <p>1 A. I'd have to go back and look. I don't know. 2 Q. Please do.</p> <p>3 A. Yeah, it kind of does here on McHugh 005498, 4 "capability/capacity to take on more," that's the exact 5 definition of moderate potential.</p> <p>6 Q. So to be specific, we're looking back at 7 Exhibit 7, and you're on page Fifth Third McHugh 005498; 8 is that right?</p> <p>9 A. Right.</p> <p>10 Q. And under the box for Phil McHugh, where it 11 lists his PM rating, it says "capability/capacity to 12 take on more," and you're saying that is indicative of 13 moderate potential because he has the ability to take on 14 more?</p> <p>15 A. Yeah. That's, you know, we didn't note it as 16 moderate potential in here, but as -- in my role as 17 CHRO, the ability to take on more at that given time 18 was, you know, reflective of moderate potential.</p> <p>19 Q. So if we look down to Tim Spence on that same 20 page, he also only had moderate potential; isn't that 21 right, because he had the capability and capacity to 22 take on more?</p> <p>23 A. Yeah. At that given time, that's what it says 24 on here, yeah.</p> <p>25 Q. So that's what that is, moderate potential?</p>
<p>Page 114</p> <p>1 A. That's not my position. I know I never 2 instructed Liz McKay to put that information in there.</p> <p>3 Q. Where would she have gotten that from?</p> <p>4 A. As I just testified, I don't know if it's a 5 clerical error, miscommunication, copy and paste error, 6 I'm not sure. This was the first of -- draft of 10 or 7 11 drafts that we had, and I wasn't focused on that 8 detail at this point.</p> <p>9 Q. The information that's put in for Phil McHugh 10 for potential next positions is exactly what Phil McHugh 11 testified that Greg Carmichael told him on August 15th, 12 that he would be the next president and ready for CEO in 13 one to two years; isn't that right?</p> <p>14 A. I have no idea what Greg told -- or what Phil 15 testified; I don't know.</p> <p>16 Q. You noted that Phil had only moderate 17 potential. Where did that come from?</p> <p>18 A. That's been, you know, common of Phil over 19 time, prior discussions I've been in with the board and 20 other talent discussions. There's nobody on the board 21 that ever communicated to me anything other than 22 moderate potential for him.</p> <p>23 Q. That's not part of the 2018 talent deck. 24 There's nothing that indicates there that Phil had 25 moderate potential, did it?</p>	<p>Page 116</p> <p>1 A. Yeah, generally speaking. Again, it's not the 2 exact definition that's, you know, put in here, in 3 our -- but it's an indication of, you know, Phil was a 4 good manager and he could take on more at that time.</p> <p>5 Q. So with respect to potential, it has three 6 rankings, high, moderate, and at potential. I'm 7 referring back to 006968 on Exhibit Number 10; do you 8 see that?</p> <p>9 A. I do.</p> <p>10 Q. Are there definitions for each of those 11 categories?</p> <p>12 A. We would have formal definitions in our human 13 capital procedures and policies, yes.</p> <p>14 Q. And is the formal definition for moderate 15 potential capable -- capability capacity to take on 16 more?</p> <p>17 A. I mean, I think as you look at this level of 18 executive in the company, you have to look at moderate 19 potential being somebody who has the ability to expand 20 their role, take on some additional responsibilities, 21 but it's not somebody that can take that giant leap 22 forward and take on substantial more responsibilities 23 and a much broader scope of leadership capabilities. 24 But, again, the details of all in this 10/25 25 draft is not what I was looking at. I was looking at</p>

<p>1 structure and format.</p> <p>2 Q. Where would Liz McKay have gotten the ranking</p> <p>3 of moderate potential for Phil McHugh?</p> <p>4 A. Again, as with any of these boxes, I'm not</p> <p>5 sure where she got the information.</p> <p>6 Q. Going back to the potential next positions,</p> <p>7 would Liz McKay, is it your position she just made up</p> <p>8 the president ready now CEO one to two years for Phil</p> <p>9 McHugh?</p> <p>10 MR. CIOFFI: Objection. Argumentative,</p> <p>11 mischaracterizes what he said. He said he didn't</p> <p>12 know.</p> <p>13 THE WITNESS: That's not my position.</p> <p>14 BY MR. SABA:</p> <p>15 Q. With respect to the information provided in</p> <p>16 the key strengths and key focus areas, for Phil McHugh</p> <p>17 specifically, where did that come from?</p> <p>18 A. I would assume it could have come from the</p> <p>19 prior year performance review that Greg did for Phil,</p> <p>20 but, again, I'd have to go back and look at it. I don't</p> <p>21 know where Liz captured the information, but if I had to</p> <p>22 guess, that would be the starting point.</p> <p>23 Q. Did that -- did this information and key</p> <p>24 strengths and key focus areas come as a result of the</p> <p>25 whiteboard meeting?</p>	<p>Page 117</p> <p>1 A. That's what it says in this first draft, yes.</p> <p>2 Q. Do you know where Liz McKay would have gotten</p> <p>3 this information to put in this talent deck for Phil</p> <p>4 McHugh?</p> <p>5 A. I do not.</p> <p>6 Q. Referring to -- and I'm still on Exhibit 10,</p> <p>7 Fifth Third McHugh 006971, which is the talent card for</p> <p>8 Tim Spence; do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Focusing on the talent information box,</p> <p>11 specifically leader capabilities on the right hand side?</p> <p>12 A. Uh-huh.</p> <p>13 Q. It indicates that although act like an owner,</p> <p>14 create connections, lead with agility, Mr. Spence has a</p> <p>15 rating of strength, and be a great coach he only has a</p> <p>16 rating as effective; is that correct?</p> <p>17 A. That's what this first draft says, yes.</p> <p>18 Q. Where would this information have come from?</p> <p>19 A. I don't know. I wasn't focused on the details</p> <p>20 here in the early drafts.</p> <p>21 Q. Under potential next positions for Mr. Spence,</p> <p>22 it lists, "Head of regional banking two plus years, head</p> <p>23 of commercial banking two plus years"; do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Where would Liz McKay have gotten that</p>
<p>Page 118</p> <p>1 A. No.</p> <p>2 Q. Were those covered in the whiteboard meeting?</p> <p>3 A. No.</p> <p>4 Q. Under key focus areas, it indicates "exposure</p> <p>5 to certain key stakeholders, example investors, earnings</p> <p>6 call and rating agencies"; do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Where would that have come from?</p> <p>9 A. Same answer as the other boxes. I'm not sure.</p> <p>10 I don't know.</p> <p>11 Q. Under succession candidates for Phil, it lists</p> <p>12 Tim Spence one to two years. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. What is that referring to?</p> <p>15 A. Again, I wasn't putting in detail here. I</p> <p>16 wasn't looking at the accuracy of this information.</p> <p>17 Q. I'm just asking what does it refer to when</p> <p>18 under the succession candidates box?</p> <p>19 A. Well, in the final version it would refer to</p> <p>20 somebody being a potential successor candidate for this</p> <p>21 role and whatever listed time period.</p> <p>22 Q. So as listed here on the October 25, 2019</p> <p>23 version of the talent deck, it's listing that Tim Spence</p> <p>24 would be ready to succeed Phil McHugh in one to two</p> <p>25 years, correct?</p>	<p>Page 120</p> <p>1 information from?</p> <p>2 A. I don't know. Same answer.</p> <p>3 Q. Under potential for Mr. Spence it lists, "High</p> <p>4 potential." Where would that information have come</p> <p>5 from?</p> <p>6 A. Same answer.</p> <p>7 Q. Although clearly he only had moderate</p> <p>8 potential back in 2018; is that right?</p> <p>9 A. In terms of what we looked at in the 2018</p> <p>10 document, but consensus was building with the board, you</p> <p>11 know, for a long time and the board definitely reflected</p> <p>12 Tim as having very high potential.</p> <p>13 Q. Where do you get that from?</p> <p>14 A. Discussions that I've been involved with at</p> <p>15 the board and talent sessions and so forth.</p> <p>16 Q. Who specifically?</p> <p>17 A. Who specifically what?</p> <p>18 Q. From the board did you have these discussions</p> <p>19 about Tim?</p> <p>20 A. Full board. We'd had the December talent</p> <p>21 discussion, so I was in the December '17, the December</p> <p>22 '18 talent discussions.</p> <p>23 Q. December 17 of what year?</p> <p>24 A. I'm sorry, 2017. December 2017 and 2018.</p> <p>25 Q. You're saying that's when you had the</p>

<p>Page 121</p> <p>1 discussions with them about Tim Spence's potential?</p> <p>2 A. Well, that's -- I'm just referencing the board</p> <p>3 discussions that I would be in. You know, there would</p> <p>4 be other discussions from time to time with the board.</p> <p>5 It's a continuous process for them for succession</p> <p>6 planning. They're constantly looking at it, you know,</p> <p>7 they would talk to Greg and share their views with Greg</p> <p>8 as well.</p> <p>9 Q. Is that where Liz McKay got this information</p> <p>10 from for potential for Tim Spence?</p> <p>11 MR. CIOFFI: Objection. Lack of foundation.</p> <p>12 If you know.</p> <p>13 THE WITNESS: No. As I've testified, I don't</p> <p>14 know where any of the details came from here in</p> <p>15 this first draft.</p> <p>16 BY MR. SABA:</p> <p>17 Q. Referring you to Fifth Third McHugh 006978,</p> <p>18 this is again on Exhibit Number 10, can you identify</p> <p>19 that document for me, please?</p> <p>20 A. Title CEO Succession.</p> <p>21 Q. And this document lists Phil McHugh as the</p> <p>22 first successor to be CEO in one to two years; is that</p> <p>23 correct?</p> <p>24 A. That's what this first draft says.</p> <p>25 Q. He's also listed as an emergency successor</p>	<p>Page 123</p> <p>1 the point in time? Thoughts?"</p> <p>2 Did you ever respond to those questions?</p> <p>3 A. Not that I recall. Again, I was looking at</p> <p>4 the format and the structure of the document that we</p> <p>5 were putting together and the early drafts. I think Liz</p> <p>6 is, you know, pointing out, you know, inconsistencies</p> <p>7 both -- in both of those last two paragraphs that</p> <p>8 somebody with moderate potential, in the second</p> <p>9 paragraph, you know, wouldn't necessarily be the -- have</p> <p>10 the positions indicated in that box, the same with the</p> <p>11 high potential person might not be two plus years. But</p> <p>12 she apparently was just pointing out potential</p> <p>13 inconsistencies.</p> <p>14 (Deposition Exhibit 11 is marked for</p> <p>15 identification.)</p> <p>16 BY MR. SABA:</p> <p>17 Q. Mr. Shaffer, I've handed you what's been</p> <p>18 marked as Exhibit Number 11, which is Bates stamped</p> <p>19 Fifth Third McHugh 006713. Can you identify that for</p> <p>20 me, please?</p> <p>21 A. It is an email from me to Nancy Pinckney and</p> <p>22 Liz McKay.</p> <p>23 Q. What do you indicate in your email to Nancy</p> <p>24 and Liz McKay?</p> <p>25 MR. CIOFFI: Objection. The document speaks</p>
<p>Page 122</p> <p>1 along with Tayfun Tuzun; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. Where did Liz McKay get the information with</p> <p>4 respect to this CEO succession plan and listing Phil</p> <p>5 McHugh as the CEO successor in one to two years?</p> <p>6 A. I don't know.</p> <p>7 Q. Did that come as a result of the whiteboard</p> <p>8 session that she had with you?</p> <p>9 A. It did not.</p> <p>10 Q. This would also be consistent with Phil</p> <p>11 McHugh's representation of what Greg Carmichael</p> <p>12 indicated to him during his midyear review on August 15,</p> <p>13 2019; is that correct?</p> <p>14 MR. CIOFFI: Objection to the form. Assumes</p> <p>15 facts not in the record. You may answer.</p> <p>16 THE WITNESS: I can't represent to Phil's</p> <p>17 representation -- I can't validate Phil's</p> <p>18 representation.</p> <p>19 BY MR. SABA:</p> <p>20 Q. Referring you back to Exhibit 9, which is Liz</p> <p>21 McKay's October 25, 2019 email to you. At the end of</p> <p>22 the email she asks a number of questions, "Also,</p> <p>23 currently, the EVP that is listed as high potential has</p> <p>24 two next potential positions, both with a readiness of</p> <p>25 two plus years? Should this be moderate potential for</p>	<p>Page 124</p> <p>1 for itself, but do you want him to read a portion</p> <p>2 of it?</p> <p>3 MR. SABA: Sure.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Read the first paragraph.</p> <p>6 A. "Thanks for all the great work on this. I</p> <p>7 have made some changes to directly to the document</p> <p>8 attached. I would appreciate you reviewing and letting</p> <p>9 me know if you have any questions or other suggestions.</p> <p>10 Nancy, as we were communicating earlier, please have</p> <p>11 Brian add the 12/17 data to the generations page. Also,</p> <p>12 I would like to get the EVS executive summary slide we</p> <p>13 use for enterprise and replace it with the current slide</p> <p>14 in the attached. I want the board to get the page that</p> <p>15 includes the Fifth Third score without MB."</p> <p>16 Q. What is the EVS executive summary slide?</p> <p>17 A. It's the employee viewpoint survey. It refers</p> <p>18 to that.</p> <p>19 Q. What is an employee viewpoint survey?</p> <p>20 A. It's an annual survey that we use an</p> <p>21 independent third-party to survey our employees on</p> <p>22 engagement.</p> <p>23 Q. Why do you do that?</p> <p>24 A. To take the temperature of the employee base,</p> <p>25 get, you know, feedback on what's working well, what</p>

<p>1 might be opportunities for us to address, both on a</p> <p>2 macro basis across the company as well as on individual</p> <p>3 teams.</p> <p>4 Q. It references here that you attached the</p> <p>5 executive -- the talent deck updated to the November 7,</p> <p>6 2019 draft; is that correct?</p> <p>7 A. Yes.</p> <p>8 MR. SABA: We can go off the record.</p> <p>9 THE VIDEOGRAPHER: The time is 1:01 p.m. We</p> <p>10 are going off the record.</p> <p>11 (A recess was taken from 1:01 p.m. to</p> <p>12 1:09 p.m.)</p> <p>13 THE VIDEOGRAPHER: The time is 1:09 p.m. We</p> <p>14 are back on the record.</p> <p>15 BY MR. SABA:</p> <p>16 Q. Mr. Shaffer, in the last paragraph of your</p> <p>17 email that's marked as Exhibit Number 11 that you sent</p> <p>18 on November 11, 2019, the paragraph reads, "Lastly, I</p> <p>19 had Phil review the one page on Kris Garrett. He was</p> <p>20 good with it. I have Brian's out to Tim for his review</p> <p>21 as well. And, I had Saema review the CEO emergency</p> <p>22 succession plan. She had one comment I will address</p> <p>23 tomorrow."</p> <p>24 Do you see all that?</p> <p>25 A. I do.</p>	<p>Page 125</p> <p>1 Garrett or Brian Lamb other than their talent card?</p> <p>2 A. I don't know. I don't recall back to November</p> <p>3 of 2019.</p> <p>4 Q. And you're referring to Tim there, that's Tim</p> <p>5 Spence; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. In the middle paragraph you referenced, "I</p> <p>8 changed Marybeth from red since the announcement went</p> <p>9 out about her."</p> <p>10 What does that mean?</p> <p>11 A. I don't know. I'm not sure.</p> <p>12 Q. And you go to say, "And on page 24, the</p> <p>13 percentages out to the right seem to be distorted.</p> <p>14 Could you please look at them and see if they need</p> <p>15 fixed?"</p> <p>16 Do you know what that means?</p> <p>17 A. I do not.</p> <p>18 (Deposition Exhibit 12 is marked for</p> <p>19 identification.)</p> <p>20 BY MR. SABA:</p> <p>21 Q. Mr. Shaffer, I've handed you what's been</p> <p>22 marked as Exhibit Number 12, Fifth Third McHugh 006714</p> <p>23 through Fifth Third McHugh 006761.</p> <p>24 A. Yes.</p> <p>25 Q. Is that correct?</p>
<p>Page 126</p> <p>1 Q. So Phil was Phil McHugh; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And who is Kris Garrett?</p> <p>4 A. Kris Garrett would have been reporting to Phil</p> <p>5 at that time, running I believe WAM, wealth and asset</p> <p>6 management.</p> <p>7 Q. And was Kris Garrett a part of the Enterprise</p> <p>8 committee?</p> <p>9 A. Yes. Let me just double-check that, but I'm</p> <p>10 pretty sure she worked with it. Yes.</p> <p>11 Q. And when you were saying the one page on Kris</p> <p>12 Garrett, it's the Kris Garrett talent card; is that</p> <p>13 right?</p> <p>14 A. I'm not sure. I don't know.</p> <p>15 Q. Well, what other page would there be on Kris</p> <p>16 Garrett other than her talent card?</p> <p>17 A. I don't know.</p> <p>18 Q. And for Brian, you're referring to Brian Lamb;</p> <p>19 is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And you're referring to Brian Lamb's talent</p> <p>22 card; is that correct?</p> <p>23 A. Again, I'm not sure. I didn't write talent</p> <p>24 card in here. I just said one page, so I'm not sure.</p> <p>25 Q. What else would they be reviewing on Kris</p>	<p>Page 128</p> <p>1 A. That's correct.</p> <p>2 Q. Can you identify this document for me, please?</p> <p>3 A. It's a draft dated November 7, 2019, the Board</p> <p>4 of Directors Executive Talent Management and Succession</p> <p>5 Plan update.</p> <p>6 Q. And this is the document that would have been</p> <p>7 attached to your November 11th email to Nancy Pinckney;</p> <p>8 is that correct?</p> <p>9 A. Again, I can't specifically say this was the</p> <p>10 document, but there's an indicator and attachments that</p> <p>11 something 2019, 11/7/19, but I can't specifically say</p> <p>12 this was the attachment to the email.</p> <p>13 Q. Are you aware if there's a different draft to</p> <p>14 the November 7, 2019?</p> <p>15 A. I am not.</p> <p>16 Q. Would there have been other conversations and</p> <p>17 meetings between you and Ms. McKay and Ms. Pinckney</p> <p>18 between October 25, 2019 and November 11, 2019?</p> <p>19 A. Regarding?</p> <p>20 Q. The talent deck?</p> <p>21 A. Not that I recall. Again, that's almost four</p> <p>22 years ago.</p> <p>23 Q. Referring you to Fifth Third McHugh 006739.</p> <p>24 A. Yes.</p> <p>25 Q. And this is again on Exhibit Number 12. That</p>

<p>Page 129</p> <p>1 is the talent card for Phil McHugh; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And with respect to this talent card for Phil</p> <p>4 McHugh, it has not changed from the October 25, 2019</p> <p>5 draft with respect to the fact it still lists potential</p> <p>6 next position president ready now; is that correct?</p> <p>7 A. That's correct. And I'm not surprised because</p> <p>8 as I said earlier, testified earlier, I was focused on</p> <p>9 the conceptual structure and framework of the early</p> <p>10 drafts of this document, not the details.</p> <p>11 Q. And it also lists CEO one to two years; is</p> <p>12 that right?</p> <p>13 A. Correct.</p> <p>14 Q. Where you had Phil McHugh review Kris</p> <p>15 Garrett's page, did you have anybody else review Phil</p> <p>16 McHugh's page?</p> <p>17 A. Not that I recall.</p> <p>18 Q. With respect to Fifth Third --</p> <p>19 A. And I said earlier, I wasn't sure that one</p> <p>20 pager in that email referred to her talent card.</p> <p>21 Q. But you're not able to identify anything else</p> <p>22 that you would have Fifth -- Phil McHugh review</p> <p>23 regarding Kris Garrett; is that right?</p> <p>24 A. Not that I recall, yes.</p> <p>25 Q. And referring to Fifth Third McHugh 006742 in</p>	<p>Page 131</p> <p>1 of banking sector, growth mindset, considered an</p> <p>2 industry expert in digital banking." He won the digital</p> <p>3 banker of the year award that year from the American</p> <p>4 Banker magazine. "Strong focus on talent."</p> <p>5 I mean, if I look at all that, you know,</p> <p>6 again, I'm speculating where Liz might have got some</p> <p>7 information, but if she looked at our priorities and</p> <p>8 looked at the strengths of the team, that would be an</p> <p>9 indicator of high potential. I look at Phil's</p> <p>10 strengths, "Long-seasoned leader, significant knowledge</p> <p>11 of the organization, thoughtful, does a good job setting</p> <p>12 direction and drives execution, holds himself and his</p> <p>13 team accountable." I mean, that's -- that's a</p> <p>14 caretaker, that's a, you know, really looking at</p> <p>15 somebody, as we talked back earlier on the emergency</p> <p>16 successor discussion, that really, really holds out that</p> <p>17 as well as somebody who has moderate potential versus</p> <p>18 high potential based on Tim's strengths here.</p> <p>19 So, again, I'm speculating on where because I</p> <p>20 didn't direct Liz to put any information in the details</p> <p>21 of these cards back then, but that could be something</p> <p>22 that she looked at.</p> <p>23 Q. So she could be looking at 2018, and that</p> <p>24 would be the same information that would indicate that</p> <p>25 Phil McHugh should be the president now and ready to be</p>
<p>Page 130</p> <p>1 Exhibit 12, that is the November 7th talent card for Tim</p> <p>2 Spence; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And it lists potential next positions, head of</p> <p>5 regional banking, head of commercial banking still; is</p> <p>6 that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. That's not changed since October 25, 2019</p> <p>9 either; is that right?</p> <p>10 A. And I'm not surprised again, because I wasn't</p> <p>11 reviewing details at that point.</p> <p>12 You know, you talk about details of where Liz</p> <p>13 may have gotten some of this information. One thought</p> <p>14 that I, you know, speculated on potentially is if you</p> <p>15 look at the 2018 talent document, which was Exhibit 7.</p> <p>16 Q. Uh-huh.</p> <p>17 A. And you look at, you know, page 3, one of our</p> <p>18 real trends influencing human capital going forward, you</p> <p>19 know, there was a digital transformation which is a</p> <p>20 really key focus -- was a key focus back then and</p> <p>21 continues to be and, you know, I look at on the</p> <p>22 individual development plan -- I'm sorry, not the</p> <p>23 individual development plan. Page 16 of that deck, you</p> <p>24 know, you look at the strengths of Tim, "Intelligent,</p> <p>25 forward-thinking, strategic leader, tremendous knowledge</p>	<p>Page 132</p> <p>1 CEO in one to two years?</p> <p>2 A. I was simply referring to potential, yeah.</p> <p>3 Yeah.</p> <p>4 Q. Would she have also gotten the information</p> <p>5 that Phil should be president now and ready to be CEO in</p> <p>6 one to two years from that same talent deck?</p> <p>7 A. No, not necessarily. As I said, I'm kind of</p> <p>8 speculating on where she might have got information</p> <p>9 because you asked me a number of questions on where this</p> <p>10 came from and, again, I didn't direct her to it. I'm</p> <p>11 just giving you what might have been a possibility.</p> <p>12 Q. Referring you back to Exhibit Number 12, Fifth</p> <p>13 Third McHugh 006749.</p> <p>14 A. 6749?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 Q. And that still lists Phil McHugh as the first</p> <p>18 successor to be CEO in one to two years; is that</p> <p>19 correct?</p> <p>20 A. That is correct. Again, an early draft that I</p> <p>21 didn't look at the content of. I know that wasn't the</p> <p>22 expectation of what the board would see and was</p> <p>23 subsequently changed to reflect what the board's views</p> <p>24 are.</p> <p>25 Q. How did you know what the board's views are?</p>

<p>Page 133</p> <p>1 A. Based on sitting in talent discussions with 2 them over time. 3 Q. So the board already decided at this point who 4 would be the next successor to be CEO? 5 A. No, they did not. They did assess that Phil 6 McHugh does not have the qualifications to be the next 7 president or CEO of the company, and they were building 8 a consensus over time, as I testified earlier, clear 9 back to 2015 when we hired Tim, but even further back 10 maybe 2011 when we hired Oliver Wyman to do our 11 strategic plan, because we didn't have anybody in-house, 12 including Phil, that could do that. So they've been 13 building their consensus over time. That continued to 14 be built through the talent discussions we had in 2017 15 and '18 as well. 16 Q. So if I understand you correctly, you're 17 saying as early as 2011 the board had determined that 18 Phil McHugh was not qualified to be president or CEO? 19 A. I didn't say that. I said that they were 20 building a consensus that Tim Spence potentially had the 21 qualifications to do that role. I'm not sure the exact 22 timing. The discussions I started having or were 23 involved with with the board when I took over as a CHRO 24 clearly indicated that the board felt that Phil did not 25 have the qualifications to be the CEO or president of</p>	<p>Page 135</p> <p>1 hire Oliver Wyman and ultimately Tim to do that. 2 The board is very focused on the go forward 3 strategy that we had back then, and today on digital 4 transformation the focus on technology and, you know, 5 the conclusion was by the board that I heard was that 6 Phil just does not have those capabilities, you know, 7 again the executive presence and emotional intelligence. 8 My feedback that I heard in those meetings from the 9 board as well as my own observations is when Phil is 10 presenting, he's reading the page, you know, you can 11 pretty easily get him derailed from his planned comments 12 and, you know, get him a little bit off base. Emotional 13 intelligence aspect, executive presence. So some of the 14 things I mentioned earlier informed those comments for 15 me. 16 Q. This determination that Phil McHugh did not 17 possess the qualifications, skills, or abilities to be 18 president and CEO of Fifth Third Bank, is that reflected 19 anywhere in the board minutes? 20 A. Not that I'm aware of. But, again, you'd have 21 to ask the board. It's not my decision on who is the 22 emergency successor or the ultimate successor for CEO. 23 The board makes those decisions. 24 Q. Did Nancy and Liz ever respond to your email 25 on November 11th?</p>
<p>Page 134</p> <p>1 Fifth Third Bank. 2 Q. When did you develop the understanding that 3 the board had determined that Phil did not possess the 4 qualifications to be president and/or CEO of the bank? 5 A. I can't remember the exact time. Again, it's, 6 you know, when I became the head of HR in 2017 and just 7 the discussions that ensued after that is my knowledge 8 base. You'd have to ask the board specifically when 9 they felt that Phil didn't have the qualifications to do 10 that. 11 Q. Was that ever communicated to you in writing? 12 A. No. 13 Q. Who specifically from the board communicated 14 that to you beginning back in 2017? 15 A. I don't recall specifically who. It was just 16 an open conversation, you know, a talent discussion with 17 the entire board, and no one in that room said in any 18 discussion I was in with the board that Phil ever had 19 the qualifications. In fact, the opposite, that he did 20 not. 21 Q. And did they specifically indicate to you why? 22 A. They talked about things, you know, strategic 23 planning and development of the strategic plan and 24 execution were key -- was one key that Phil didn't 25 possess. Again, that's why we had to go external and</p>	<p>Page 136</p> <p>1 A. Not that I'm aware of. I don't recall if they 2 did or not. 3 Q. Would that be typical of them not to respond 4 with any reviews or changes that you requested? 5 A. I'm not sure. If they -- I don't know if the 6 email asked them. I mean, maybe they updated things in 7 the following draft and provided it. I can't recall 8 what happened back at this time. 9 Q. They reported to you, correct? 10 A. Nancy was a direct report of mine, yes. 11 Q. What about Liz McKay? 12 A. Liz reported to Nancy at that time, I believe. 13 Q. Well, they both were subordinates of yours, 14 correct? 15 A. Sure. Yes. 16 Q. But you don't recall if they responded back to 17 any direction you gave them? 18 A. I don't recall getting an email back. I mean, 19 could there have been a conversation? I don't know, I 20 don't recall that either. But there was a drafting 21 process going on that, you know, was continuing from 22 October until the time of the board meeting and 23 the final draft reviewed by -- to the board members. 24 (Deposition Exhibit 13 is marked for 25 identification.)</p>

<p>Page 137</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Shaffer, you've been handed what's marked</p> <p>3 as Exhibit Number 12, Fifth Third McHugh 006886.</p> <p>4 A. No, it's actually Exhibit Number 13.</p> <p>5 Q. Oh, I'm sorry. Are we on 13? I stand</p> <p>6 corrected. Thank you.</p> <p>7 Exhibit 13. Thank you. It's Fifth Third</p> <p>8 McHugh 006886; is that correct?</p> <p>9 A. That's the first page, yes.</p> <p>10 Q. And that is through Fifth Third McHugh 006940;</p> <p>11 is that right?</p> <p>12 A. Correct.</p> <p>13 Q. Thank you. Can you identify this document for</p> <p>14 me, please?</p> <p>15 A. It's a draft dated November 11, 2019, Board of</p> <p>16 Directors Executive Talent Management and Succession</p> <p>17 Plan Update.</p> <p>18 Q. If I can refer you specifically to Fifth Third</p> <p>19 McHugh 006918.</p> <p>20 A. Yes.</p> <p>21 Q. And that is the talent card for Phil McHugh;</p> <p>22 is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And looking specifically at talent information</p> <p>25 under leader capabilities, the category of be a great</p>	<p>Page 139</p> <p>1 A. Well, I would have probably gone back and</p> <p>2 looked at performance -- the prior year performance</p> <p>3 reviews, as well as, again, the discussions that we've</p> <p>4 had with the board in the past and their views of these</p> <p>5 different categories and so forth.</p> <p>6 Q. Did the board ever express views about Phil's</p> <p>7 ability as a great coach?</p> <p>8 A. The conversations and the talent discussions</p> <p>9 included some of the assessments that I discussed</p> <p>10 earlier around Phil's capabilities and not being able to</p> <p>11 take timely employee actions in terms of changing</p> <p>12 somebody out of position, getting them in the right</p> <p>13 role, not having those tough conversations and so forth.</p> <p>14 So those were all included in the discussions.</p> <p>15 Q. Those comments that you're referring to about</p> <p>16 not being able to timely remove employees being made by</p> <p>17 board members, are those reflected anywhere in writing?</p> <p>18 A. No, they would not be reflected in writing.</p> <p>19 They would have been discussed in like in key focus</p> <p>20 areas here, timely execution of talent management</p> <p>21 actions to ensure the best leaders are in key positions.</p> <p>22 Q. Are you able to identify who specifically</p> <p>23 referred to those issues with Phil, which board members?</p> <p>24 A. No.</p> <p>25 Q. Are you able to identify when these comments</p>
<p>Page 138</p> <p>1 coach has changed from a strength to effective; is that</p> <p>2 correct?</p> <p>3 A. It has, and that makes a lot of sense to me.</p> <p>4 This is obviously the draft I got into the details. And</p> <p>5 actually if you look back at Phil's performance reviews</p> <p>6 that Greg did, I can only speak to 2017, 2018, 2019,</p> <p>7 basically Greg always had a comment in there about</p> <p>8 Phil's talent opportunities or needs, many of which I</p> <p>9 highlighted earlier in my testimony.</p> <p>10 Q. So who made the determination that that should</p> <p>11 change from be a great coach from strength to effective?</p> <p>12 A. I would have as I started to look at the</p> <p>13 details of these talent cards and aligning them to what</p> <p>14 I know the board's views are, and as well as if there's</p> <p>15 specific information that would come from data sources</p> <p>16 we have, so whether those are performance reviews that</p> <p>17 Greg has done of the enterprise members or, you know,</p> <p>18 just confirming other factual information presented</p> <p>19 here.</p> <p>20 Q. Do you recall specifically where that change</p> <p>21 came from?</p> <p>22 A. I would -- I would assume it came from me.</p> <p>23 Q. No. You said you would go to a number of</p> <p>24 different sources. What was the specific source to</p> <p>25 change be a great coach from a strength to effective?</p>	<p>Page 140</p> <p>1 were made?</p> <p>2 A. They would have been in the context of the</p> <p>3 talent management conversations we specifically had in</p> <p>4 December of each year.</p> <p>5 Q. But they're not documented in writing</p> <p>6 anywhere?</p> <p>7 A. Not documented other than the discussions that</p> <p>8 would occur with the board members, you know, Greg, and</p> <p>9 me.</p> <p>10 Q. Well, my point being they're verbal, there's</p> <p>11 nothing in writing that reflects that?</p> <p>12 A. Correct. Correct. Greg's annual performance</p> <p>13 review would include any of these potential strengths</p> <p>14 and focus areas.</p> <p>15 Q. With respect to potential next position, it's</p> <p>16 been changed from president ready now and CEO one to two</p> <p>17 years to head of middle market banking ready now?</p> <p>18 A. Correct.</p> <p>19 Q. Where did that information come from?</p> <p>20 A. Well, when I started reviewing the details,</p> <p>21 again, the board, you know, never expressed that Phil</p> <p>22 had the qualifications to be the president or CEO, so</p> <p>23 that was just inaccurate information. We talked about</p> <p>24 that earlier. In terms of head of middle market</p> <p>25 banking, I think that would have been, you know, coming</p>

<p>1 from conversations we had previously had with the board 2 or, you know, Greg's thought on opportunities for the 3 enterprise team in general. No different than -- I bet 4 you if I looked at mine, it would indicate that 5 potential next positions would be the chief risk 6 officer, and I guess that's exactly what happened in 7 2020.</p> <p>8 Q. So specifically, where did head of middle 9 market banking come from? Did you put that in? Did 10 that come from Greg Carmichael? Who put that in the 11 talent deck?</p> <p>12 A. It would have been discussions that Greg and I 13 would have had related to the executive team. It's our 14 job -- Greg as the manager, me as the head of HR -- to 15 look at the executive team and see what potential next 16 positions might make sense for their continued 17 development, our continued need as a company, and 18 the shareholders' needs.</p> <p>19 And that's more, you know, at the -- Greg and 20 my level, I mean, the board sees this, they understand 21 it, they agree with it. The board's focus is on the CEO 22 succession. They're the ones that are ultimately making 23 the call on the next CEO, whether that's an emergency 24 CEO or a permanent successor CEO.</p> <p>25 Q. When did you and Greg have the discussion that</p>	<p>Page 141</p> <p>1 Q. Is there any documentation in writing anywhere 2 where a board member has indicated, prior to 3 November 11, 2019, that Phil McHugh is not qualified to 4 be president and/or CEO of Fifth Third Bank?</p> <p>5 MR. CIOFFI: Counsel, just for clarification 6 sake, you're talking about documents only, not 7 testimony, are you?</p> <p>8 MR. SABA: I'm talking about documents, 9 correct.</p> <p>10 MR. CIOFFI: Documents only. You may answer.</p> <p>11 THE WITNESS: Not that I'm aware of from the 12 documentation perspective. Again, being in my role 13 and being in the conversations with the board over 14 time on talent succession planning, it was very 15 clear to me, again, the board's decision that they 16 believed that Phil did not have the qualifications 17 to be the president or CEO of Fifth Third Bank.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Under key focus areas, the first bullet point 20 that existed on the November 7th draft, indicating 21 exposure to certain key shareholders, example investors, 22 earnings -- earnings call and rating agencies was 23 removed. Why was that bullet point removed?</p> <p>24 MR. CIOFFI: Counsel, by way of objection, 25 could you state on the record which two pages</p> <p>Page 143</p>
<p>Page 142</p> <p>1 Phil McHugh's talent card should indicate that his 2 potential next position is head of middle market 3 banking?</p> <p>4 A. I would say we could have discussions 5 throughout the year on all the enterprise members. 6 Again, it's his job as the CEO, the leader of the 7 enterprise team. It's my job as the head of HR to 8 continuously be thinking about what our executive team 9 members' potential next positions could be, what makes 10 sense for the company, as I mentioned earlier, and to 11 the individual in terms of development and so forth.</p> <p>12 It's not a one-and-done kind of conversation. 13 It's a continuous process.</p> <p>14 Q. Are any of these conversations documented in 15 writing anywhere, indicating that the potential next 16 position for Phil McHugh should be head of middle market 17 banking ready now?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. And is there any documentation in writing 20 anywhere where board members indicated, prior to 21 November 11, 2019, that Phil McHugh is not suitable to 22 be president and/or CEO of Fifth Third Bank?</p> <p>23 A. Can you repeat that?</p> <p>24 Q. Sure.</p> <p>25 A. Long question.</p>	<p>Page 144</p> <p>1 you're talking about, just so it's clear?</p> <p>2 MR. SABA: Certainly. I'm referring -- I'm 3 comparing Fifth Third McHugh 006739, which is --</p> <p>4 MR. CIOFFI: Yes.</p> <p>5 MR. SABA: -- part of Exhibit 12 --</p> <p>6 MR. CIOFFI: Okay.</p> <p>7 MR. SABA: -- to Fifth Third McHugh 006918.</p> <p>8 MR. CIOFFI: Okay.</p> <p>9 MR. SABA: Which is the talent card for Phil 10 McHugh for -- on Exhibit 13; do you see that? And 11 I'm referring specifically to the key focus area 12 box and the first bullet point that appears on 13 Fifth Third McHugh 06739 under key focus areas has 14 been removed in the talent card version that we see 15 on Fifth Third McHugh 006918; do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Why was that removed?</p> <p>18 A. Well, again, I can't attest to the earlier -- 19 or the former page you referenced. As I testified 20 earlier, that information, I'm not sure exactly where 21 all that came from as I focus on more of the details in 22 this draft when somebody has moderate potential and can 23 be the head of middle market banking or take on some 24 additional responsibilities, it would not be a 25 development or focus area to get that type of exposure</p>

<p>Page 145</p> <p>1 versus somebody who does have the qualifications and the</p> <p>2 potential to -- and high potential to be the next</p> <p>3 president or CEO candidate.</p> <p>4 Q. Where would Liz McKay get that as a key focus</p> <p>5 area for Phil McHugh?</p> <p>6 A. Which one are you referring to?</p> <p>7 Q. In the -- and I'm referring to Fifth Third</p> <p>8 McHugh 006739, first bullet point.</p> <p>9 A. 6739.</p> <p>10 Q. That's the November 7th.</p> <p>11 A. Right. As I testified earlier, I'm not sure.</p> <p>12 I don't know. Cut and paste error, clerical error, I'm</p> <p>13 not sure.</p> <p>14 Q. Exhibit 13, if you can turn to Fifth Third</p> <p>15 McHugh 006921. Now I'm going to compare that to Fifth</p> <p>16 Third McHugh 006742. Under leader capabilities, Tim</p> <p>17 Spence was previously indicated to be only effective as</p> <p>18 be a great coach, and then he was changed to strength in</p> <p>19 the November 11, 2019 version. Do you have those pages</p> <p>20 open?</p> <p>21 A. I do.</p> <p>22 Q. Who made the decision to change his ranking of</p> <p>23 be a great coach from effective to strength?</p> <p>24 A. I would have.</p> <p>25 Q. And what did you base that upon?</p>	<p>Page 147</p> <p>1 time he hired Ben Hoffman in the strategy group, who now</p> <p>2 runs strategy for us, and also runs consumer product, so</p> <p>3 a big role. He hired Bridgit Chayt, who runs our</p> <p>4 payments business. He's hired Tim Bianco, who runs our</p> <p>5 embedded payments business, so I could go on and on with</p> <p>6 examples of -- that would emphasize how I would view Tim</p> <p>7 and how the board would view Tim in terms of the</p> <p>8 strength of his talent and being a great coach.</p> <p>9 Q. So being a great coach is based on who you</p> <p>10 hire is what you're saying?</p> <p>11 A. Not solely, no.</p> <p>12 Q. So --</p> <p>13 A. It's really more all-encompassing kind of</p> <p>14 talent.</p> <p>15 Q. Is being a great coach giving employees the</p> <p>16 perception that you're dismissive?</p> <p>17 MR. CIOFFI: Objection to the form of the</p> <p>18 question, lack of foundation.</p> <p>19 BY MR. SABA:</p> <p>20 Q. Go ahead.</p> <p>21 A. I'm not sure what you mean by the question.</p> <p>22 Q. Is being -- is one characteristic of being a</p> <p>23 great coach giving employees the perception that you're</p> <p>24 dismissive of their suggestions, their recommendations?</p> <p>25 A. I don't have a specific example of what you're</p>
<p>Page 146</p> <p>1 A. Well, if you go back to Exhibit 7, the 2018</p> <p>2 talent management update document, page 16, other than</p> <p>3 me just knowing Tim and what the board thinks of Tim's</p> <p>4 talent, effectiveness, coaching, the last bullet of</p> <p>5 Tim's strength, "strong focus on talent and the</p> <p>6 workforce of the future."</p> <p>7 Q. So you based -- you based that ranking off his</p> <p>8 2018 talent deck?</p> <p>9 A. As one -- one item potentially looking at it.</p> <p>10 Also on other things that we discussed with the board,</p> <p>11 the talent moves Tim made over time. I mean, when Tim</p> <p>12 joined Fifth Third, he inherited a team and a direct</p> <p>13 report team that he completely changed. And there was</p> <p>14 Kevin Sullivan, Charlie Bradley, Rick Rosen, and another</p> <p>15 person in there, Mike Butera, who Tim looked at add said</p> <p>16 they're not getting done what they need to in this role,</p> <p>17 but they're valuable employees, and he moved them to</p> <p>18 different roles. And still today they're with the</p> <p>19 company performing very effectively for us.</p> <p>20 There were two other people on that direct</p> <p>21 report team that Tim didn't feel was appropriate to have</p> <p>22 in the company, given their skill sets and performance</p> <p>23 and so forth, so they were no longer with the company.</p> <p>24 He then over time has really hired really some</p> <p>25 significant key talent force in the company. At that</p>	<p>Page 148</p> <p>1 talking about.</p> <p>2 Q. You'd agree that based upon Tim Spence's</p> <p>3 review, his problem was, one of his issues was, is that</p> <p>4 he had to improve his communication skills because his</p> <p>5 approach that he had with employees made him appear</p> <p>6 dismissive of them?</p> <p>7 A. Yeah, I think that's one thing Tim needed to</p> <p>8 work on early. I mean, Tim is incredibly intelligent,</p> <p>9 he's fast paced, and the feedback really resulted around</p> <p>10 Tim bringing people along and making sure that they're</p> <p>11 fully understanding, onboard. He's done a fantastic job</p> <p>12 with that. He accepted that feedback and I don't see</p> <p>13 any issue with it.</p> <p>14 But, again, in the talent world and being a</p> <p>15 great coach with everything inclusive, there's a lot of</p> <p>16 stuff that goes into that assessment overall.</p> <p>17 Q. So with respect to that issue that he had, you</p> <p>18 ignored that with respect to labeling him as a strength</p> <p>19 of be a great coach?</p> <p>20 A. No.</p> <p>21 MR. CIOFFI: Objection. Lack of foundation.</p> <p>22 Argumentative. But you may answer.</p> <p>23 THE WITNESS: No, it would have been all</p> <p>24 inclusive of -- if that existed at that time. Are</p> <p>25 you referring to the dismissive feedback in the</p>

<p>1 third-party review?</p> <p>2 BY MR. SABA:</p> <p>3 Q. No. I'm referring -- you're relying a lot on</p> <p>4 this, it said you went back to the 2018 talent deck --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- when you determined he's a great coach</p> <p>7 looking at that talent deck?</p> <p>8 A. Yeah.</p> <p>9 Q. If we look at that same page, Fifth Third</p> <p>10 McHugh 005498, it indicates specifically, "Improve</p> <p>11 communication response approach to eliminate perception</p> <p>12 of being dismissive."</p> <p>13 A. Yeah.</p> <p>14 Q. So clearly that was a problem that he had.</p> <p>15 A. Well, that was an opportunity he had to work</p> <p>16 on, sure, as I just attested to.</p> <p>17 Q. And notwithstanding that, you still decide to</p> <p>18 give him a rating of strength for being a great coach;</p> <p>19 is that right?</p> <p>20 A. Well, again, in this draft I would have put</p> <p>21 that in. Ultimately at the end of the day, Greg would</p> <p>22 have needed to agree. He's the manager here.</p> <p>23 The manager is ultimately responsible for these</p> <p>24 assessments. We're working through building the</p> <p>25 document of what we believe the board would consider and</p>	<p>Page 149</p> <p>1 Q. When did anybody from the board specifically</p> <p>2 indicate to you that Tim Spence would be president, CEO</p> <p>3 within one year or CEO within two years?</p> <p>4 A. I don't remember a specific time. The</p> <p>5 consensus was building all along, as I attested to</p> <p>6 earlier by the board, and what I heard in those</p> <p>7 discussions from Tim from 2015 and prior that he had the</p> <p>8 potential and that capabilities and the qualifications</p> <p>9 to be the next president, CEO, and that was building</p> <p>10 over time.</p> <p>11 Q. Can you identify the specific board members</p> <p>12 who said that and when they said it?</p> <p>13 A. No, I can't. I don't recall the specific</p> <p>14 ones.</p> <p>15 Q. Did you have any conversations with Greg</p> <p>16 Carmichael prior to revising the talent deck to insert</p> <p>17 that Tim Spence would be listed as president, CEO one</p> <p>18 year and CEO two years?</p> <p>19 A. I don't recall discussions specifically</p> <p>20 related to the deck here, but as I attested to earlier,</p> <p>21 Greg and I had conversations throughout the year on the</p> <p>22 enterprise team and their next potential positions and</p> <p>23 so forth, and more importantly as it relates to</p> <p>24 potential CEO, emergency, or permanent successor</p> <p>25 candidates, whatever information he's discussing or</p>
<p>Page 150</p> <p>1 reflect as information that would be in here. But Greg</p> <p>2 would also have that view, and we would look at</p> <p>3 everything holistically.</p> <p>4 Q. Going back to Fifth Third McHugh 006921,</p> <p>5 Exhibit 13, this is the November 11th talent deck.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Under Tim Spence's next potential -- next --</p> <p>8 or potential next positions, it has, "President/CEO one</p> <p>9 year, CEO two years"; is that right?</p> <p>10 A. It does.</p> <p>11 Q. Who put that in?</p> <p>12 A. I would have put that in based on discussions</p> <p>13 that I heard from the board or the -- that Greg</p> <p>14 communicated to me from the board.</p> <p>15 Q. When specifically did you have a conversation</p> <p>16 with anybody at the board that Tim Spence would be</p> <p>17 president, CEO within one year and CEO within two years?</p> <p>18 A. Again, it would have been in the broader</p> <p>19 talent discussions with the board and/or feedback that</p> <p>20 Greg would have given me from his discussions with the</p> <p>21 board.</p> <p>22 Q. When did Greg specifically indicate that Tim</p> <p>23 Spence would be president, CEO within one year and CEO</p> <p>24 within two years?</p> <p>25 A. I don't recall a specific time.</p>	<p>Page 152</p> <p>1 getting from the board.</p> <p>2 Q. The bullet point that was previously listed</p> <p>3 for Phil McHugh of exposure to certain key stakeholders,</p> <p>4 example investors, earnings call and rating agencies,</p> <p>5 was added to Tim Spence's key focus areas on</p> <p>6 November 11th. Did you make that change?</p> <p>7 A. I did.</p> <p>8 Q. Why did you make that change?</p> <p>9 A. Because that's one of the key focus areas for</p> <p>10 somebody that the board considers to be qualified to be</p> <p>11 the next president or CEO successor.</p> <p>12 Q. And I know we've asked this question about</p> <p>13 Phil McHugh, but with respect to Tim Spence, your</p> <p>14 conclusion that the board has indicated that Tim Spence</p> <p>15 is qualified to be the next president, CEO and</p> <p>16 successor, is that set forth in writing anywhere?</p> <p>17 A. No. Because once -- it would not have been</p> <p>18 finalized in terms of that decision until the board</p> <p>19 actually made that decision. Now, when that board</p> <p>20 meeting occurred, there might have been minutes taken at</p> <p>21 that time, but I -- I'm not -- I wasn't in the CHR role</p> <p>22 at that time. But nothing's final until the board makes</p> <p>23 their final decision on what they want to do.</p> <p>24 Q. Can you turn to Fifth Third McHugh 006928?</p> <p>25 Again, this is part of Exhibit 13, the November 11, 2019</p>

<p>1 talent deck draft. Can you identify that document for 2 me, please? 3 A. The title is CEO Succession. 4 Q. And the succession plan has been changed to 5 now list Tim Spence as the first CEO successor in one to 6 two years instead of Phil McHugh; is that right? 7 A. That's correct. Accurately reflecting the 8 board's views, yes. 9 Q. And you keep referring to the board's views, 10 but those aren't reflected anywhere in writing as of 11 this point in time, are they? 12 A. No. It's discussions that the board has, has 13 with Greg and I or has just with Greg, yes. 14 Q. Did you ever show any of the earlier drafts of 15 the talent deck to any members of the board? 16 A. To any members of the board? 17 Q. Yes. 18 A. No. 19 Q. Why not? 20 A. They're not involved in the sausage making 21 process of drafts and iterations of drafts and so forth. 22 The intent is to get in here, especially since we were 23 restructuring the structure and the format of the 24 document, and reflecting, you know, attempting to really 25 reflect the accuracy of the information.</p>	<p>Page 153</p>	<p>1 BY MR. SABA: 2 Q. Mr. Shaffer, you've been handed what's been 3 marked as Fifth Third McHugh 006762 through Fifth Third 4 McHugh 006811. Could you identify that for me, please? 5 A. It's a draft dated November 12, 2019. Board 6 of Directors Human Capital and Executive Talent 7 Management Succession Plan Updates. 8 Q. If I can refer you to Fifth Third McHugh 9 006792 on Exhibit Number 14. That is a talent card for 10 Tim Spence; is that correct? 11 A. It is. 12 Q. If you can compare that for me to Exhibit 13 Number 13, Fifth Third McHugh 006921. 14 A. Compared in what ways are you talking about? 15 Q. I'm going to ask you a specific question. Do 16 you have both those pages open? 17 A. 92 and 21, yeah. 18 Q. Correct. And the key strengths areas and key 19 focus areas for Mr. Spence have been rewritten in the 20 November 12th version; do you see that? 21 A. Uh-huh. 22 Q. Who rewrote the key strengths and key focus 23 areas for Mr. Spence? 24 A. Very likely me, as I was continuing to iterate 25 through the drafting process, you know, going from those</p>	<p>Page 155</p>
<p>1 We've heard from the board and/or just this 2 raw data from our HR systems and so forth. But, as 3 always, I would provide a final draft that in this case 4 with this document would have gone to Marsha Williams as 5 the lead independent director and Mike McCallister who's 6 the head of the human capital and compensation committee 7 to get any of their feedback, changes, etc., prior to 8 initially finalizing the document and issuing it to the 9 full board. 10 And when we had the talent management 11 discussion in December with the full board, I mean, the 12 full -- anybody on the board could raise any changes, 13 questions, concerns on any information in this deck that 14 they want to, particularly around CEO succession and 15 emergency succession. 16 MR. SABA: We can go off the record. 17 THE VIDEOGRAPHER: The time is 1:54 p.m. We 18 can go off the record. 19 20 (A recess was taken from 1:54 p.m. to 2:31 21 p.m.) 22 THE VIDEOGRAPHER: The time is 2:31 p.m. We 23 are back on the record. 24 (Deposition Exhibit 14 is marked for 25 identification.)</p>	<p>Page 154</p>	<p>1 early drafts of conceptual format and structure being 2 correct to now focused on the details within the 3 document. So I would assume that I would have provided 4 direction to Liz and/or Nancy to make those changes. 5 Q. So Liz and Nancy, just to be clear, they're 6 the ones who were physically going in and making the 7 changes; is that correct? 8 A. I think for the most part, although you had an 9 earlier email that said I made some changes, but I don't 10 know what those are. But generally speaking, yes. 11 Q. You would have them make the changes? 12 A. Yes. 13 Q. And they would make the changes at your 14 direction, correct? 15 A. Correct. 16 Q. And with respect to the changes we see to the 17 key strengths and the key focus areas on Mr. Spence's 18 talent card, where did that information come from? 19 A. I'm sorry, can you repeat that, please? 20 Q. With respect to the changes that we see in the 21 key strengths areas and key focus areas for Mr. Spence, 22 from the November 11 -- 23 A. Uh-huh. 24 Q. -- 2019 talent card to the November 12, 2019 25 talent card, where did the information come from that</p>	<p>Page 156</p>

<p>Page 157</p> <p>1 you inserted in the key strengths and key focus areas?</p> <p>2 A. I don't remember specifically where the</p> <p>3 details of the changes came from. You know, it's</p> <p>4 probably me continuing to iterate on the details, now</p> <p>5 that I'm focussed on them, and these drafts based on,</p> <p>6 you know, prior conversations I had with Greg, what</p> <p>7 we've talked to the board about, or the board's talked</p> <p>8 to us about it in the past, so it's continuing to, you</p> <p>9 know, like any normal drafting process, continuing to</p> <p>10 build it out and get it reflective of what we believe</p> <p>11 the ending draft needs to look like and what the board</p> <p>12 information -- what the information the board wants.</p> <p>13 Q. Are you able to refer to any specific</p> <p>14 documents where you would have obtained the information</p> <p>15 from, that we see, for example, on key strengths from</p> <p>16 Mr. Spence on Fifth Third McHugh 006792?</p> <p>17 A. Not a specific document. Again, we would</p> <p>18 always look back to the prior year's version that we</p> <p>19 utilized for the board. You know, might have looked at</p> <p>20 Tim's performance evaluation that Greg completed of him</p> <p>21 in the prior year, as well as just, you know, my role as</p> <p>22 the CHRO and the discussions I had with Greg or -- and</p> <p>23 discussions with the board continue to refine out and</p> <p>24 fill out the detailed information.</p> <p>25 Q. In the last bullet point under key strengths,</p>	<p>Page 159</p> <p>1 things, your question and the potential pieces, I mean,</p> <p>2 I think you really have to look at those strength</p> <p>3 buckets as the -- how the board viewed the potential.</p> <p>4 And you asked me about documentation earlier. You know,</p> <p>5 the board reviewed this document in December of 2018.</p> <p>6 They obviously didn't make any changes to it. So I</p> <p>7 would probably consider this documentation of how the</p> <p>8 board viewed the strengths and opportunities of Phil and</p> <p>9 Tim and the potential that they have overall.</p> <p>10 Q. So you said the board didn't make any changes</p> <p>11 to the 2018 talent deck?</p> <p>12 A. There was no requested changes to this talent</p> <p>13 deck from 2018, and the final version that was reviewed</p> <p>14 with the board.</p> <p>15 Q. So does the board typically request changes be</p> <p>16 made to the talent deck?</p> <p>17 A. They could request changes. It's at their</p> <p>18 discretion, or they could have discussions and form</p> <p>19 different views.</p> <p>20 Q. Has the board ever requested any changes to</p> <p>21 any talent deck?</p> <p>22 A. I have no idea. I was only ever in a few of</p> <p>23 the yearend talent discussion with these decks maybe.</p> <p>24 Q. Has the board ever requested any of the talent</p> <p>25 decks that you were involved in, changed any of the</p>
<p>Page 158</p> <p>1 you indicate, "Attracts and effectively coaches talent.</p> <p>2 Has followership and is viewed as inspiring and</p> <p>3 approachable"; is that right?</p> <p>4 A. Uh-huh. I do.</p> <p>5 Q. Isn't that the complete opposite of somebody</p> <p>6 who is perceived as being dismissive?</p> <p>7 A. I guess I would like to go back to Exhibit 7,</p> <p>8 the December 2018 talent management update. You know,</p> <p>9 really thinking through the comments here and the</p> <p>10 strengths for both Phil McHugh and Tim Spence, and the</p> <p>11 opportunities, you know, these are not mutually</p> <p>12 inclusive and so forth. I think if you look -- a couple</p> <p>13 different things here from my perspective.</p> <p>14 As I mentioned earlier, if you look at the</p> <p>15 strengths for Tim, intelligent, forward-thinking,</p> <p>16 strategic, tremendous knowledge of banking sector, you</p> <p>17 know, growth mindset, industry expert in digital banking</p> <p>18 transformation, strong focus on talent, I mean, those</p> <p>19 are, again, considerations and qualities that the</p> <p>20 board -- qualifications the board would look at in</p> <p>21 somebody being qualified to be a CEO, president of the</p> <p>22 company; whereas I mentioned earlier, the strengths that</p> <p>23 Phil has would lead to more that caretaker approach, can</p> <p>24 take on a little bit more responsibility but so forth.</p> <p>25 So I think from going back covering a couple</p>	<p>Page 160</p> <p>1 talent decks that were involved in?</p> <p>2 A. No, I don't believe so. I think, you know,</p> <p>3 again, we get reflected in here what the board's views</p> <p>4 are, and they validate them. They can certainly have</p> <p>5 the discretion to make the changes, if they wanted.</p> <p>6 Q. But you're not aware of the board ever making</p> <p>7 any changes to any talent deck, correct?</p> <p>8 A. Not the ones I was involved with, yes.</p> <p>9 Q. Or any others that you weren't involved with,</p> <p>10 are you aware of the board requesting changes to the</p> <p>11 talent deck?</p> <p>12 MR. CIOFFI: Objection. Lack of foundation.</p> <p>13 No basis. No foundation.</p> <p>14 THE WITNESS: I do not know.</p> <p>15 BY MR. SABA:</p> <p>16 Q. My question was with respect to the key</p> <p>17 strength that you added for Mr. Spence, where he is it</p> <p>18 viewed as inspiring and approachable --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- that's the opposite of being perceived as</p> <p>21 dismissive; isn't that correct?</p> <p>22 A. Yeah, again, I think you have to look at all</p> <p>23 the stuff in totality and the dismissive piece we talked</p> <p>24 about earlier, I mean, you could also view that as --</p> <p>25 and what it might have been back then -- is when Tim</p>

<p style="text-align: right;">Page 161</p> <p>1 joined the company he had to make some significant</p> <p>2 changes to talent, and some of those folks may not have</p> <p>3 viewed him as anything but dismissive. Particularly if</p> <p>4 they were no longer with the company and giving that</p> <p>5 feedback or were moved to other positions.</p> <p>6 So you have to look at all in totality, and</p> <p>7 Tim's strengths were very significant, and that was</p> <p>8 reflective of the -- of the view at that point.</p> <p>9 Q. What, if any, objective data supports the key</p> <p>10 strengths that you listed for Mr. Spence on the</p> <p>11 November 12, 2019 talent deck?</p> <p>12 A. So we're on the --</p> <p>13 Q. That is Exhibit Number 14, and that's Fifth</p> <p>14 Third McHugh 006792.</p> <p>15 A. Could you repeat the question, please?</p> <p>16 Q. Sure. What, if any, objective data do you</p> <p>17 have to support the key strengths that you listed for</p> <p>18 Mr. Spence on Exhibit Number 14, Fifth Third McHugh</p> <p>19 006792?</p> <p>20 A. I think you could look at all these</p> <p>21 individually and have objective data. The strategic</p> <p>22 vision, you know, sees and executes on growth</p> <p>23 strategies. MB financial, we talked about that earlier.</p> <p>24 Tim was the entire reason we were able to acquire MB</p> <p>25 Financial and have those types of growth opportunities.</p>	<p style="text-align: right;">Page 163</p> <p>1 there was objective information. There would have been</p> <p>2 at that time. I witnessed him setting high standards</p> <p>3 and holding his team, you know, accountable for meeting</p> <p>4 expectations, coaching them when needed and adjusting.</p> <p>5 Has the courage to make the tough decisions. I mean, I</p> <p>6 would go back to what I talked about with talent</p> <p>7 earlier. In fact, he had to clean out and repopulate</p> <p>8 his entire direct report line when he joined the</p> <p>9 company.</p> <p>10 So -- and that kind of ties into the fourth</p> <p>11 bullet point as well. So I think there's a lot of</p> <p>12 objective and other evidence that just supports all</p> <p>13 those key strengths.</p> <p>14 Q. What do you understand "objective data" to</p> <p>15 mean when I use that phrase?</p> <p>16 A. I think it can mean a lot of things. Like the</p> <p>17 MB Financial example I gave you. That's very objective.</p> <p>18 We wouldn't have had that deal if it wasn't for Tim.</p> <p>19 Financial information would be the financial statements,</p> <p>20 you know, documentation of those. The talent moves and</p> <p>21 why he's being called out as a strength here are very</p> <p>22 objective. Those were people that were in roles that</p> <p>23 are no longer in roles. New roles are people he's hired</p> <p>24 externally to fill those roles.</p> <p>25 Q. And viewed as inspiring, as approachable, that</p>
<p style="text-align: right;">Page 162</p> <p>1 He cultivated relationships with that management team,</p> <p>2 and I guarantee you if you ask the three members that</p> <p>3 are on our board, including one who is the former CEO of</p> <p>4 MB Financial, Mitch Feiger, he would tell you that Tim</p> <p>5 Spence is absolutely the only reason Fifth Third was</p> <p>6 able to buy MB, even though we were not the highest</p> <p>7 bidder.</p> <p>8 Q. Although Phil McHugh was the guy who you</p> <p>9 needed to fix all the problems at MB; isn't that right?</p> <p>10 A. He did not fix -- we did not need Phil to fix</p> <p>11 all the problems. We needed him to focus on what I</p> <p>12 discussed earlier around credit and the communication</p> <p>13 and coordination between the team members of MB that we</p> <p>14 were acquiring and integrating with the team members</p> <p>15 from Fifth Third to make sure the collaboration and</p> <p>16 communication was going on, but Phil wouldn't have had</p> <p>17 that opportunity if Tim Spence hadn't closed that deal</p> <p>18 for us.</p> <p>19 Q. Go ahead. You were providing me with</p> <p>20 objective data.</p> <p>21 A. Yeah, the profitability and so forth. We'd</p> <p>22 have to pull the, you know, whatever the financial</p> <p>23 information for the areas that Tim was responsible for</p> <p>24 back then.</p> <p>25 But there would be objective -- you asked if</p>	<p style="text-align: right;">Page 164</p> <p>1 would be something we would see obviously in the</p> <p>2 employee viewpoint surveys, that information, correct?</p> <p>3 A. Not necessarily, no.</p> <p>4 Q. Why not?</p> <p>5 A. You know, the employee viewpoint survey, as I</p> <p>6 mentioned earlier, is a good tool that we utilize on an</p> <p>7 annual basis to get feedback from our employee base to</p> <p>8 look at things on a macro level, from a bank roll</p> <p>9 perspective that we can either reinforce if we're doing</p> <p>10 well or if we're not doing something as well as we want</p> <p>11 to, make some changes. As well as down to the</p> <p>12 individual manager level.</p> <p>13 But the employee viewpoint survey,</p> <p>14 particularly in Tim's areas, when you're coming in and</p> <p>15 changing that whole direct report line, and you're</p> <p>16 changing people out underneath it, I mean, you know,</p> <p>17 that takes some time. I mean, the employee viewpoint</p> <p>18 survey I would equate to a little bit more like a</p> <p>19 likability survey, so that is not representative --</p> <p>20 those results are not representative of the</p> <p>21 characteristics and qualities of making an overall good</p> <p>22 leader, and certainly not qualifications from a</p> <p>23 successor of the CEO or president of Fifth Third.</p> <p>24 Q. Wouldn't those be indicative of the ability to</p> <p>25 lead, the ability to get the employee to remain engaged,</p>

<p>1 employee engagement surveys?</p> <p>2 A. Yeah. Not in all cases, though. In cases</p> <p>3 where, as I described a couple times now, where Tim had</p> <p>4 to make wholesale changes to the team, it takes some</p> <p>5 time to work through those, get the employees in, get</p> <p>6 them integrated in the company, get them more engaged</p> <p>7 and productive in the way that you need to.</p> <p>8 So -- and it all depends. I was the chief</p> <p>9 auditor for a long time, and some years I had good</p> <p>10 survey results and others I didn't because the sole role</p> <p>11 of internal audit in the company is rating, providing a</p> <p>12 control rating to people, and sometimes those are good</p> <p>13 and sometimes those are bad.</p> <p>14 So people who are doing that work and</p> <p>15 delivering those messages don't always feel good about</p> <p>16 their job and so forth. Now, we do all kinds of things</p> <p>17 to try to make them feel good in terms of development</p> <p>18 opportunities and other engagement activities, but it</p> <p>19 doesn't necessarily reflect on the leader's overall</p> <p>20 capabilities.</p> <p>21 (Deposition Exhibit 15 is marked for</p> <p>22 identification.)</p> <p>23 BY MR. SABA:</p> <p>24 Q. Mr. Shaffer, you've been handed what's marked</p> <p>25 as Exhibit Number 15, Fifth Third McHugh 006836 through</p>	<p>Page 165</p> <p>1 succession areas.</p> <p>2 Q. Who made that decision that should be changed?</p> <p>3 A. I'm not sure there. I mean, ultimately, you</p> <p>4 know, I would have been responsible for the document, so</p> <p>5 but I don't remember specifically making the change.</p> <p>6 Q. Who decided it was the board's view that Tim</p> <p>7 Spence would be CEO in two to three years instead of one</p> <p>8 to two years?</p> <p>9 A. I think it's is not deciding whether he would</p> <p>10 be. It's, you know, the potential of being there in a</p> <p>11 period of time. Whether it's one to two years or two to</p> <p>12 tree years, at the end of the day the board -- when the</p> <p>13 board's ready and they believe Tim's ready or whoever</p> <p>14 the candidate is, that's when they pull the trigger.</p> <p>15 Q. You said this was to reflect the board's view</p> <p>16 of when he would be ready --</p> <p>17 A. Yeah.</p> <p>18 Q. -- who determined that the board's view was</p> <p>19 that he would be ready in two to three years as opposed</p> <p>20 to one to two years?</p> <p>21 A. Again, I don't remember exactly -- I don't</p> <p>22 recall how this changed version to version. We were</p> <p>23 iterating through. I think we're probably, what, on</p> <p>24 draft 5 or 6 at this point of 10 or 11. So we were</p> <p>25 iterating to get the information reflective of what it</p>
<p>Page 166</p> <p>1 Fifth Third McHugh 006885.</p> <p>2 A. Yes.</p> <p>3 Q. Can you identify that document for me, please?</p> <p>4 A. It's a draft dated November 13, 2019,</p> <p>5 entitled, "Board of Directors Human Capital and</p> <p>6 Executive Talent Management and Succession Plan</p> <p>7 Updates."</p> <p>8 Q. With respect to Exhibit 15, if you could turn</p> <p>9 to Fifth Third McHugh 006873. And if you can compare</p> <p>10 that to Exhibit 14, Fifth Third McHugh 06799; do you see</p> <p>11 that?</p> <p>12 A. 6799?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 Q. With respect to Tim Spence, in the</p> <p>16 November 12, 2019 version, Fifth Third McHugh 006799, it</p> <p>17 says CEO succession one to two years. That's then</p> <p>18 changed to two to three years in the November 13th</p> <p>19 version; do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Why was that changed?</p> <p>22 A. I don't recall specifically. I know this is</p> <p>23 an iterative drafting process as we were going through,</p> <p>24 you know, fine tuning, trying to get the information</p> <p>25 reflective of the board's view, particularly in the CEO</p>	<p>Page 168</p> <p>1 needed to be before it went in draft form to the two</p> <p>2 board members for review, and then ultimately to the</p> <p>3 full board for discussion.</p> <p>4 Q. And, again, the board doesn't see any of these</p> <p>5 versions; is that right?</p> <p>6 A. They do not. They do not.</p> <p>7 Well, let me clarify that. When you say "any</p> <p>8 of these versions," nothing that we've looked at so far.</p> <p>9 Clearly, as I testified earlier, Marsha Williams is our</p> <p>10 lead independent director, Mike McCallister had of our</p> <p>11 human capital compensation committee, did receive a</p> <p>12 draft version that they had the opportunity to look at</p> <p>13 and provide any feedback that they wanted prior to</p> <p>14 finalizing and sending out to the board.</p> <p>15 Q. Right. That's after you've gone through the</p> <p>16 drafts; is that right?</p> <p>17 A. Yeah, after the iterative drafting process,</p> <p>18 yeah.</p> <p>19 Q. And the general intention of each of the</p> <p>20 revisions you've been making is to make Tim Spence more</p> <p>21 attractive to the board as an candidate as president and</p> <p>22 CEO and to make Phil McHugh less attractive as a</p> <p>23 candidate and president CEO; isn't that correct?</p> <p>24 MR. CIOFFI: Objection. Lack of foundation.</p> <p>25 Argumentative, but if you can answer.</p>

<p>Page 169</p> <p>1 THE WITNESS: Sure. Absolutely not. It's not</p> <p>2 my job to make anybody more attractive or less</p> <p>3 attractive, and it really doesn't matter what my</p> <p>4 view or opinion or how attractive or unattractive I</p> <p>5 make somebody look. It's the board's decision on</p> <p>6 who's qualified to be the next president and CEO.</p> <p>7 So I had nothing to do with making anybody</p> <p>8 more or less attractive.</p> <p>9 BY MR. SABA:</p> <p>10 Q. That's right, but you know that the board</p> <p>11 relies heavily on what the talent deck indicates with</p> <p>12 respect to these individuals and their candidacy for</p> <p>13 being potentially president or CEO; isn't that right?</p> <p>14 MR. CIOFFI: Objection. Lack of foundation.</p> <p>15 Assumes facts not in evidence. Argumentative. You</p> <p>16 may answer.</p> <p>17 BY MR. SABA:</p> <p>18 Q. Go ahead.</p> <p>19 A. Sure. The board looks at this information</p> <p>20 year over year. It's a continuous process. But at the</p> <p>21 end of the day, they do not rely on this information.</p> <p>22 They rely on their own independent assessment of who is</p> <p>23 qualified to be either an emergency or a permanent</p> <p>24 successor to the CEO.</p> <p>25 Q. And they can only rely on the information that</p>	<p>Page 171</p> <p>1 chair, and now the risk chair, I have separate</p> <p>2 discussions with that committee and the chair of that</p> <p>3 committee very frequently.</p> <p>4 Q. Outside you attending board meetings or</p> <p>5 committee meetings, the board members do not come and</p> <p>6 observe members of the enterprise committee on a</p> <p>7 day-to-day basis doing their job?</p> <p>8 MR. CIOFFI: Objection. He answered the</p> <p>9 question.</p> <p>10 BY MR. SABA:</p> <p>11 Q. Correct?</p> <p>12 A. Actually our lead --</p> <p>13 MR. CIOFFI: Argumentative. Go ahead.</p> <p>14 THE WITNESS: Actually our lead independent</p> <p>15 director, Nick Akins, in the office today meeting</p> <p>16 with some folks.</p> <p>17 BY MR. SABA:</p> <p>18 Q. Did Marsha Williams or any other members of</p> <p>19 the board ever go and observe and watch Phil McHugh in</p> <p>20 the office on a daily basis?</p> <p>21 MR. CIOFFI: Objection. Lack of foundation.</p> <p>22 Argumentative.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Are you aware of any information that they</p>
<p>Page 170</p> <p>1 you all are ultimately going to provide to them about</p> <p>2 these particular candidates; isn't that right?</p> <p>3 MR. CIOFFI: Objection. Same objection.</p> <p>4 Assumes facts not in evidence. No foundation.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Go ahead.</p> <p>7 MR. CIOFFI: Argumentative.</p> <p>8 THE WITNESS: Yeah, that's incorrect again.</p> <p>9 They have their own basis for building their</p> <p>10 understanding and understanding the capabilities</p> <p>11 and qualifications of the individual candidates as</p> <p>12 they've worked with the executive team over the</p> <p>13 years. They're forming their own conclusions.</p> <p>14 I could put anything I want in these</p> <p>15 documents. At the end of the day, it doesn't</p> <p>16 matter. The board would decide on what they want</p> <p>17 to do.</p> <p>18 BY MR. SABA:</p> <p>19 Q. They don't observe the executive team in the</p> <p>20 workplace, do they?</p> <p>21 A. They do in board meetings. You know, there</p> <p>22 might be other individual meetings they have with</p> <p>23 various executive team members on various topics. We've</p> <p>24 had some issues from time to time. For instance, in my</p> <p>25 capacity as audit chair for a while, human capital comp</p>	<p>Page 172</p> <p>1 obtained other than the information provided to them for</p> <p>2 board meetings or committee meetings?</p> <p>3 MR. CIOFFI: Objection. Asked and answered.</p> <p>4 He already answered it.</p> <p>5 THE WITNESS: Could you repeat the question,</p> <p>6 please?</p> <p>7 MR. SABA: Sure.</p> <p>8 BY MR. SABA:</p> <p>9 Q. During the period prior to September 21, 2020,</p> <p>10 are you aware of any information that the board was</p> <p>11 provided regarding Phil McHugh other than at board</p> <p>12 meetings and committee meetings?</p> <p>13 A. I am not aware of any. It doesn't mean there</p> <p>14 wasn't.</p> <p>15 (Deposition Exhibit 16 is marked for</p> <p>16 identification.)</p> <p>17 BY MR. SABA:</p> <p>18 Q. Mr. Shaffer, I've handed you what's been</p> <p>19 marked as Exhibit 15, Fifth Third McHugh 007016 -- 16,</p> <p>20 excuse me. Exhibit 16, Fifth Third McHugh 007016</p> <p>21 through Fifth Third McHugh 007065.</p> <p>22 A. Correct.</p> <p>23 Q. Can you identify that for me, please?</p> <p>24 A. It's a draft dated December 1, 2019 entitled,</p> <p>25 "Board of Directors Human Capital and Executive Talent</p>

<p>Page 173</p> <p>1 Management and Succession Plan Updates."</p> <p>2 Q. Referring you to Fifth Third McHugh 007053.</p> <p>3 A. Uh-huh.</p> <p>4 Q. And that again is the CEO succession chart; do</p> <p>5 you see that?</p> <p>6 A. I do.</p> <p>7 Q. And the CEO succession timeline for Tim Spence</p> <p>8 has been changed from two to three years to three-plus</p> <p>9 years.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Who made that change?</p> <p>14 A. I do not know. I mean, I did not review all</p> <p>15 these drafts. This was an iterative process that, you</p> <p>16 know, there's 10 or 11 drafts of, but I know for a fact</p> <p>17 I did not review every single draft.</p> <p>18 Q. Well, who's reviewing the other drafts if</p> <p>19 you're not reviewing them?</p> <p>20 A. Well, I don't -- not necessarily anybody other</p> <p>21 than maybe Liz and Nancy, because as each draft is being</p> <p>22 iterated, they're probably making formatting changes,</p> <p>23 font size changes, color changes, you know, I don't</p> <p>24 know, but I did not review all the drafts, nor would it</p> <p>25 be common for me to review every draft of any document</p>	<p>Page 175</p> <p>1 the final decision on who and when somebody goes</p> <p>2 into the president and/or CEO role.</p> <p>3 (Deposition Exhibit 17 is marked for</p> <p>4 identification.)</p> <p>5 BY MR. SABA:</p> <p>6 Q. Mr. Shaffer, you've been handed what's been</p> <p>7 marked as Exhibit 17, Fifth Third McHugh 001466 through</p> <p>8 Fifth Third McHugh 001515. Can you identify that</p> <p>9 document for me, please?</p> <p>10 A. It's a draft document dated December 3, 2019,</p> <p>11 entitled, "Board of Directors Human Capital and</p> <p>12 Executive Talent Management Succession Plan Updates."</p> <p>13 (Deposition Exhibit 18 is marked for</p> <p>14 identification.)</p> <p>15 BY MR. SABA:</p> <p>16 Q. Mr. Shaffer, I've handed you Exhibit Number</p> <p>17 18, which is Fifth Third McHugh 001465. Can you</p> <p>18 identify that document for me, please?</p> <p>19 A. It is an email from me dated December 5th --</p> <p>20 excuse me, December 5, 2019 to Paula Hennard -- I don't</p> <p>21 know what that is -- maybe just -- I don't know.</p> <p>22 Further down it's an email from me to -- on December the</p> <p>23 3, 2019 to Marsha Williams, our lead independent</p> <p>24 director, Mike McCallister, head of human capital</p> <p>25 compensation committee, and Greg Carmichael.</p>
<p>Page 174</p> <p>1 we prepared.</p> <p>2 Q. Would Liz or Nancy unilaterally change the</p> <p>3 timeline for Tim Spence to become CEO from two to three</p> <p>4 years to three-plus years?</p> <p>5 A. I don't know. I would assume not, but I also</p> <p>6 don't know why it's changing, and we're iterating again</p> <p>7 and having this, you know, discussions probably Nancy</p> <p>8 and me and Liz from time to time, I don't know.</p> <p>9 Q. Do you know where that information came from</p> <p>10 to change that to three-plus years?</p> <p>11 A. I do not.</p> <p>12 Q. Do you know why it was changed?</p> <p>13 MR. CIOFFI: Objection. Asked and answered.</p> <p>14 THE WITNESS: I do not. Again, I would just</p> <p>15 emphasize it's important to have a perspective on</p> <p>16 time period, but it's the board's decision. And I</p> <p>17 do want to say that the board is very sophisticated</p> <p>18 at Fifth Third. We have a lot of former public</p> <p>19 company CEOs. We have former CFOs, we have</p> <p>20 regulators, people deep in technology capabilities,</p> <p>21 so, again, when the final draft was reviewed by the</p> <p>22 two board members I mentioned earlier and</p> <p>23 distributed to the board, they can make whatever</p> <p>24 decision they want. This is just information in</p> <p>25 front of them. At the end of the day, they have</p>	<p>Page 176</p> <p>1 Q. And this is when you forwarded them a draft of</p> <p>2 the human capital executive talent management succession</p> <p>3 plan; is that right?</p> <p>4 A. What's the question again?</p> <p>5 Q. Just to be clear, Exhibit 18 is a forward to</p> <p>6 Paula Hennard of a prior email that you had sent to</p> <p>7 Marsha Williams, Mike McCallister, and Greg Carmichael;</p> <p>8 is that right?</p> <p>9 A. Correct. Correct.</p> <p>10 Q. And it also included an attachment of the</p> <p>11 December 3, 2019 talent deck; is that right?</p> <p>12 A. That's the date on this.</p> <p>13 Q. And that's the talent deck we've marked as</p> <p>14 Exhibit Number 17; is that correct?</p> <p>15 A. Yes. Again, as I said earlier, I can't attest</p> <p>16 that this was the exact exhibit attached to that email,</p> <p>17 but it's dated the same.</p> <p>18 Q. In your email, you ask Marsha Williams and</p> <p>19 Mike McCallister to let you know if they have any</p> <p>20 questions or other feedback; is that correct?</p> <p>21 A. I did.</p> <p>22 Q. Did they have any other questions or any other</p> <p>23 feedback?</p> <p>24 A. I don't recall. That's four years ago. I</p> <p>25 don't know.</p>

<p>Page 177</p> <p>1 Q. You don't know if they requested any changes?</p> <p>2 A. Not that I recall from back then, no. It's a</p> <p>3 long time ago.</p> <p>4 Q. You had previously met -- and when I say</p> <p>5 "previously," prior to sending the talent deck to Marsha</p> <p>6 Williams and Mike McCallister -- with Greg Carmichael to</p> <p>7 review the talent deck; is that right, 2019?</p> <p>8 A. My standard process would have been to have</p> <p>9 the CEO review any materials that go out to the board,</p> <p>10 yes.</p> <p>11 Q. How many meetings did you have with Greg</p> <p>12 Carmichael regarding the 2019 talent deck?</p> <p>13 A. I do not recall.</p> <p>14 Q. What, if any, changes do you recall Greg</p> <p>15 Carmichael making to the 2019 talent deck?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall him making any changes to the</p> <p>18 2019 talent deck?</p> <p>19 A. I don't recall.</p> <p>20 Q. To clarify my question, did Greg Carmichael</p> <p>21 ever tell you to make changes to the talent deck? Bless</p> <p>22 you.</p> <p>23 A. I'm sorry. Could you repeat that?</p> <p>24 Q. Did Greg Carmichael ever tell you to make</p> <p>25 changes to the 2019 talent deck?</p>	<p>Page 179</p> <p>1 A. Yeah. That's correct.</p> <p>2 (Deposition Exhibit 20 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, you've been handed what's marked</p> <p>6 as Exhibit Number 20, Fifth Third McHugh 001105 through</p> <p>7 Fifth Third McHugh 001154. Is that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Can you identify this document for me, please?</p> <p>10 A. It's a document entitled, "Board of Directors</p> <p>11 Human Capital and Executive Talent Management Succession</p> <p>12 Plan Updates" dated December 17, 2019.</p> <p>13 Q. Would this appear to be the final version of</p> <p>14 the December 2019 talent deck that you emailed to the</p> <p>15 all the board members in anticipation of the board</p> <p>16 meeting on December 17, 2019?</p> <p>17 A. It would appear to be, yes.</p> <p>18 Q. Five days before the December 17, 2019 board</p> <p>19 meeting, was there an enterprise committee meeting on</p> <p>20 Thursday, December 12th?</p> <p>21 A. I have no idea.</p> <p>22 Q. Did you ever -- did you ever attend the</p> <p>23 enterprise committee meetings that were held on Thursday</p> <p>24 mornings?</p> <p>25 A. All of them from the time I -- well, I</p>
<p>Page 178</p> <p>1 A. Oh, I think he would he have, yeah, if he</p> <p>2 reviewed it and had any changes he wanted me to make, he</p> <p>3 would have, yeah.</p> <p>4 Q. Which changes did he tell you to make?</p> <p>5 A. I don't recall.</p> <p>6 (Deposition Exhibit 19 is marked for</p> <p>7 identification.)</p> <p>8 BY MR. SABA:</p> <p>9 Q. Mr. Shaffer, you've been handed what's marked</p> <p>10 as Exhibit Number 19, Fifth Third McHugh 001104. Can</p> <p>11 you identify that for me, please?</p> <p>12 A. It is an email that went to all of our board</p> <p>13 members, copying Greg and others.</p> <p>14 Q. And this email that you sent to the board</p> <p>15 members is sending them a final version of the talent</p> <p>16 deck before the September 17, 2019 board meeting; is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And based on the wording of the email, you</p> <p>20 would have sent that about a week before the meeting; is</p> <p>21 that correct?</p> <p>22 A. There's not a date on the email. Maybe my</p> <p>23 assistant sent this out, I don't know.</p> <p>24 Q. Your last line in the email indicates, "I look</p> <p>25 forward to seeing you next week"; is that right?</p>	<p>Page 180</p> <p>1 shouldn't say all of them. I was on the enterprise</p> <p>2 committee, so if there would have been an enterprise</p> <p>3 meeting, I would have attended.</p> <p>4 Q. Do you have any recollection of the enterprise</p> <p>5 committee meeting that was held on December 12, 2019?</p> <p>6 A. No, I do not have any recollection of it.</p> <p>7 Q. Do you recall at an enterprise committee</p> <p>8 meeting, although you don't recall that one, at that</p> <p>9 meeting Frank Forrest indicating that we all know that</p> <p>10 Greg likes to control the message to the board?</p> <p>11 Do you recall that statement?</p> <p>12 A. No, I do not.</p> <p>13 Q. Do you recall Frank Forrest ever making a</p> <p>14 comment like that at an enterprise committee meeting</p> <p>15 about Greg wanting to control the message to the board?</p> <p>16 A. I do not recall that kind of a message -- that</p> <p>17 kind of a comment from Frank.</p> <p>18 Q. Do you recall that after Frank Forrest made</p> <p>19 that comment at an enterprise committee meeting, you</p> <p>20 immediately texted Greg about Frank Forrest's comment?</p> <p>21 MR. CIOFFI: Objection. Lack of foundation.</p> <p>22 THE WITNESS: I don't recall that, no.</p> <p>23 BY MR. SABA:</p> <p>24 Q. You do not recall being concerned about Frank</p> <p>25 affecting the ability of Greg Carmichael to influence</p>

<p>Page 181</p> <p>1 the board regarding the selection of Tim Spence as the</p> <p>2 next president and CEO of Fifth Third Bank?</p> <p>3 MR. CIOFFI: Objection. Lack of foundation.</p> <p>4 Argumentative. But you may answer.</p> <p>5 THE WITNESS: I do not recall and I don't ever</p> <p>6 recall Greg controlling a message to the board that</p> <p>7 I was involved in. In fact, I had free rein with</p> <p>8 my board committee that I was responsible for or</p> <p>9 any board members. So I never felt that at all.</p> <p>10 BY MR. SABA:</p> <p>11 Q. Weren't you concerned about Frank Forrest</p> <p>12 being left alone with the board of the directors as a</p> <p>13 result of that comment?</p> <p>14 MR. CIOFFI: Objection. Lack of foundation.</p> <p>15 THE WITNESS: What was the question?</p> <p>16 BY MR. SABA:</p> <p>17 Q. Weren't you concerned about Frank Forrest</p> <p>18 being left alone with the board of directors as a result</p> <p>19 of that comment?</p> <p>20 A. I don't recall four years ago.</p> <p>21 Q. You were afraid that because of that comment,</p> <p>22 Frank was a loose cannon rolling around on the deck;</p> <p>23 isn't that right?</p> <p>24 MR. CIOFFI: Objection. Foundation. Lack of</p> <p>25 foundation. But you may answer.</p>	<p>Page 183</p> <p>1 Argumentative.</p> <p>2 THE WITNESS: I do not recall that.</p> <p>3 (Mr. McHugh exits the room.)</p> <p>4 (The following testimony is Confidential --</p> <p>5 Subject to Protective Order.)</p>
<p>Page 182</p> <p>1 THE WITNESS: I don't recall that.</p> <p>2 BY MR. SABA:</p> <p>3 Q. You were also concerned that if Frank was not</p> <p>4 controlled, he would screw up the plan of Greg</p> <p>5 influencing the board of directors to select Tim Spence</p> <p>6 as the next president and CEO; isn't that right?</p> <p>7 MR. CIOFFI: Objection. Lack of foundation.</p> <p>8 THE WITNESS: I don't recall that, and as I've</p> <p>9 testified earlier, Greg doesn't make the decision</p> <p>10 on who the next CEO is; it's the board.</p> <p>11 BY MR. SABA:</p> <p>12 Q. In fact, you were concerned -- you referred to</p> <p>13 it as Frank could blow the mast off the ship. You</p> <p>14 agreed with that, correct?</p> <p>15 MR. CIOFFI: Objection. Lack of foundation.</p> <p>16 Argumentative.</p> <p>17 THE WITNESS: I don't recall that.</p> <p>18 BY MR. SABA:</p> <p>19 Q. In fact, your concerns regarding what Frank</p> <p>20 Forrest might say to the board about Greg's control of</p> <p>21 the message to the board made it clear to you that you</p> <p>22 needed to move forward quickly with respect to the</p> <p>23 recommendation of Tim Spence as successor to Greg</p> <p>24 Carmichael as president and CEO; isn't that right?</p> <p>25 MR. CIOFFI: Objection. Lack of foundation.</p>	<p>Page 184</p> <p>1 * * *</p> <p>2 (Deposition Exhibit 21 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, you've been handed what's been</p> <p>6 marked as Exhibit Number 21.</p> <p>7 MR. CIOFFI: Counsel, objection, again. This</p> <p>8 is for attorneys' eyes only. It contains</p> <p>9 privileged information and materials that should</p> <p>10 not be disclosed publicly.</p> <p>11 BY MR. SABA:</p> <p>12 Q. It is Bates stamped Fifth Third McHugh</p> <p>13 0213148; is that correct?</p> <p>14 A. I'm sorry, repeat that. Oh, yes, 023148</p> <p>15 (sic), yes.</p> <p>16 Q. And I am going to refer you, Mr. Shaffer, this</p> <p>17 is a text message exchange between you and Tim Spence;</p> <p>18 is that correct?</p> <p>19 A. It is.</p> <p>20 Q. And referring you to the text message from</p> <p>21 you, beginning on December 12, 2019 at 6:44 p.m., and</p> <p>22 you text, "How about that comment he made about GC in</p> <p>23 enterprise"; do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Okay. Do you know who that's referring to?</p>

<p>1 A. I do not. I do not recall.</p> <p>2 Q. And Tim Spence responded, "Not good." Do you</p> <p>3 see that?</p> <p>4 A. I do.</p> <p>5 Q. And then you responded, "Don't leave him alone</p> <p>6 with the board."</p> <p>7 A. I did not.</p> <p>8 Q. Or Tim Spence said, "Don't leave him alone</p> <p>9 with the board"; is that right?</p> <p>10 A. That's what this says, yes.</p> <p>11 Q. You then agree with that statement, "Agree";</p> <p>12 is that right?</p> <p>13 A. Yes.</p> <p>14 Q. "I already confronted him on this comment. He</p> <p>15 backtracked." That was Frank Forrest that you</p> <p>16 confronted; isn't that right?</p> <p>17 A. I do not recall.</p> <p>18 Q. Then Tim Spence responds, "Good. Thanks for</p> <p>19 doing that"; do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And then Tim Spence responds again, "He is a</p> <p>22 loose cannon rolling around on the decks right now"; do</p> <p>23 you see that?</p> <p>24 A. I do.</p> <p>25 Q. He also says, "Could blow the mast of the</p>	<p>Page 185</p>	<p>1 inference that is reasonable there. Is that -- is</p> <p>2 that your -- you trying to testify or what? Are</p> <p>3 you asking him a question?</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, do you see that?</p> <p>6 MR. CIOFFI: What's your question?</p> <p>7 BY MR. SABA:</p> <p>8 Q. Do you understand the question?</p> <p>9 A. I do not.</p> <p>10 Q. You would agree, sir, that your text message</p> <p>11 on December 12th appears to be in the middle of a</p> <p>12 conversation, "How about that comment he made about GC</p> <p>13 in enterprise"; isn't that right?</p> <p>14 A. I have no idea whether that's in the middle of</p> <p>15 a conversation or not. It could have been the first</p> <p>16 text I sent him.</p> <p>17 Q. Do you have any recollection of this text</p> <p>18 message exchange?</p> <p>19 A. I do not.</p> <p>20 Q. You agree that he could blow the mast off the</p> <p>21 ship; is that right?</p> <p>22 MR. CIOFFI: Objection.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Do you see that in the text message exchange?</p> <p>25 MR. CIOFFI: Is your question does it say</p>	<p>Page 187</p>
<p>1 ship"; do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And you respond, "I agree. Need to move</p> <p>4 forward quickly"; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. That was all discussing comments by Frank</p> <p>7 Forrest at the December 12th enterprise committee</p> <p>8 meeting; isn't that right?</p> <p>9 A. I have no idea. I don't know what the context</p> <p>10 of this is or who it's about.</p> <p>11 Q. The text message exchange between you and</p> <p>12 Mr. Spence, it jumps from November 23, 2019 to</p> <p>13 December 12, 2019.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Had you deleted the text messages for that</p> <p>18 month between yourself and Mr. Spence?</p> <p>19 A. Not that I recall.</p> <p>20 Q. You'd agree that your comment, "How about that</p> <p>21 comment he made about GC in enterprise," that appears to</p> <p>22 be responding about somebody else and responding to</p> <p>23 another text; isn't that right?</p> <p>24 MR. CIOFFI: Objection. Counsel, you're sort</p> <p>25 of making this up as you go along. There's no such</p>	<p>Page 186</p>	<p>1 that?</p> <p>2 BY MR. SABA:</p> <p>3 Q. You agree it says that. You know that, right?</p> <p>4 A. I agree that it says it, sure.</p> <p>5 Q. Why did you feel you needed to move forward</p> <p>6 quickly?</p> <p>7 MR. CIOFFI: Objection. Lack of foundation.</p> <p>8 Lack of context. But if you know.</p> <p>9 THE WITNESS: As I testified, I have no idea</p> <p>10 what the context of this text chain is or who it's</p> <p>11 about.</p> <p>12 (Mr. McHugh enters the room.)</p> <p>13 (Deposition Exhibit 22 is marked for</p> <p>14 identification.)</p> <p>15 MR. CIOFFI: Counsel, if you're going to move</p> <p>16 past 20 again, as with these other exhibits for</p> <p>17 eyes only, we need to redact all the</p> <p>18 personal information, confidential information,</p> <p>19 etc., other than what you just questioned the</p> <p>20 witness about, of course. That's fine. Agreed?</p> <p>21 MR. SABA: I don't have a problem with that.</p> <p>22 MR. CIOFFI: Okay.</p> <p>23 And then when you finish your next line of</p> <p>24 questioning, you know, we've been going maybe 60 --</p> <p>25 you know, about 80 minutes or 90 minutes. So</p>	<p>Page 188</p>

<p>1 whenever you're --</p> <p>2 MR. SABA: Okay.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Mr. Shaffer, you've been handed what is marked</p> <p>5 as Exhibit Number 22, Fifth Third McHugh 000253 through</p> <p>6 Fifth Third McHugh 000265; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Are you able to identify this document for me?</p> <p>9 A. It is the minutes from the board of directors</p> <p>10 meeting on December 17th.</p> <p>11 Q. 2019?</p> <p>12 A. I'm sorry, 2019, yes.</p> <p>13 Q. Have you ever seen these minutes before?</p> <p>14 A. I don't recall.</p> <p>15 Q. Are you ever provided with copies of the board</p> <p>16 of directors minutes?</p> <p>17 A. Not typically, no.</p> <p>18 Q. You were obviously present at this board</p> <p>19 meeting; is that correct?</p> <p>20 A. I was present for the executive performance</p> <p>21 review session in the role of CHRO, chief human</p> <p>22 resources officer. I would not have attended the entire</p> <p>23 board meeting. Different than what I am as a chief risk</p> <p>24 officer, I typically attend most of the board meeting.</p> <p>25 Q. Referring down into the executive performance</p>	<p>Page 189</p> <p>1 board -- the board committees that those two positions</p> <p>2 are responsible for.</p> <p>3 Q. And that's why it's just for those two board</p> <p>4 positions; is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. It then indicates "Mr. King from FW Cook</p> <p>7 provided aggregate data reporting on the performance of</p> <p>8 each officer."</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what data that is that Mr. King is</p> <p>11 providing?</p> <p>12 A. That would have been the individual director</p> <p>13 reviews for the chief audit officer and chief risk</p> <p>14 officer, because our process is such that it's</p> <p>15 independent feedback from each of the applicable board</p> <p>16 members that are on the audit committee and the risk</p> <p>17 committee. It goes to FW Cook and FW Cook aggregates</p> <p>18 the information for those two positions and provides it</p> <p>19 back to us as a company.</p> <p>20 Q. Moving back to the third full paragraph, it</p> <p>21 says, "After Mr. Shaffer returned to the meeting, he</p> <p>22 and Mr. Carmichael also reviewed succession planning for</p> <p>23 each executive officer, including a discussion of</p> <p>24 potential long-term and emergency succession planning</p> <p>25 candidates for each such position."</p>
<p>Page 190</p> <p>1 review, in the second full paragraph, "They," --</p> <p>2 referring to you and Mr. Carmichael -- "then reviewed</p> <p>3 the proposed performance review for each executive</p> <p>4 officer other than Mr. Carmichael, including a</p> <p>5 discussion of key achievements, strengths,</p> <p>6 opportunities, and development planning priorities for</p> <p>7 such individuals"; is that correct?</p> <p>8 A. That's what it says.</p> <p>9 Q. Did I read that correctly?</p> <p>10 Is that essentially the information that's in</p> <p>11 the final version of the talent deck?</p> <p>12 A. I would believe that it was, whoever wrote the</p> <p>13 minutes proposed performance review. Yeah, this would</p> <p>14 have been strength of opportunities and so forth in</p> <p>15 those talent cards, yeah.</p> <p>16 Q. It then goes on to say, "For each of the chief</p> <p>17 audit officer and chief risk officer, the directors also</p> <p>18 reviewed the results of such officer's completed</p> <p>19 self-review, individual risk assessment, and individual</p> <p>20 director reviews"; is that correct?</p> <p>21 A. Yes, that is correct.</p> <p>22 Q. But that's only done for the chief audit</p> <p>23 officer and the chief risk officer; is that correct?</p> <p>24 A. That's correct. That's a regulatory</p> <p>25 requirement that we have independent assessments done by</p>	<p>Page 192</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Who were the candidates that were reviewed for</p> <p>4 long-term and emergency succession planning?</p> <p>5 A. Well, it said for each such position, so those</p> <p>6 are all the --</p> <p>7 Q. It's a number of different positions? All</p> <p>8 right.</p> <p>9 A. Yes. Yeah. Yes.</p> <p>10 Q. Turning to the next page, 000254?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Beginning with the first full paragraph after</p> <p>13 the resolutions; do you see that?</p> <p>14 A. I'm sorry, after the resolutions?</p> <p>15 Q. Yes. It begins with the paragraph thereafter.</p> <p>16 A. Uh-huh.</p> <p>17 Q. About halfway down the page.</p> <p>18 A. Yes.</p> <p>19 Q. "Thereafter, Mr. Carmichael and Mr. Shaffer</p> <p>20 initiated review of potential succession time lines and</p> <p>21 candidates for the chief executive officer position.</p> <p>22 They reviewed top succession candidates, including</p> <p>23 Mr. Spence, and discussed the potential time lines for</p> <p>24 their readiness and key development priorities for each</p> <p>25 such candidate."</p>

<p>Page 193</p> <p>1 Do you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Who were the candidates that were reviewed by</p> <p>4 you and Mr. Carmichael for chief executive officer?</p> <p>5 A. For chief executive officer in 2019, we would</p> <p>6 have reviewed the information in the talent deck that we</p> <p>7 previously looked at, related to Tim Spence, because Tim</p> <p>8 was the only qualified successor candidate as viewed by</p> <p>9 the board for such a position. So that would have been</p> <p>10 Tim.</p> <p>11 Q. The sentence indicates you reviewed top</p> <p>12 succession candidates, not just a candidate.</p> <p>13 A. Yeah. My guess is that refers to the fact</p> <p>14 that we had some emergency successors on there, too. If</p> <p>15 I recall, we had Phil, Tayfun Tuzun, and a board member</p> <p>16 as potential emergency successor candidates. So that</p> <p>17 might be what that sentence is referring to.</p> <p>18 Q. But you're saying there were no other</p> <p>19 candidates reviewed for CEO other than Mr. Spence?</p> <p>20 A. That's correct. Because that was the board's</p> <p>21 view that Tim was the only qualified potential successor</p> <p>22 candidate for that position.</p> <p>23 Q. The sentence goes on to read, "and discussed</p> <p>24 the potential time lines for their readiness and key</p> <p>25 development priorities for each such candidate."</p>	<p>Page 195</p> <p>1 Q. And was that communicated anywhere in writing</p> <p>2 prior to this December 17, 2019 meeting?</p> <p>3 A. In writing, no. It would have been in</p> <p>4 discussions with the board, prior talent discussions,</p> <p>5 discussions, you know, that they had. So --</p> <p>6 Q. The next sentence reads, "In response to</p> <p>7 director questions, Mr. Carmichael and Mr. Shaffer</p> <p>8 commented upon the potential external candidates that</p> <p>9 could be considered for such a role, including a</p> <p>10 discussion of the known capabilities of such candidates</p> <p>11 and the potential challenges created by appointment of</p> <p>12 an external candidate for the role."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Who were the external candidates that were</p> <p>16 reviewed?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were there any?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you recall any of the known capabilities</p> <p>21 and/or potential challenges of the candidates, the</p> <p>22 external candidates?</p> <p>23 A. I don't recall any discussion around</p> <p>24 capabilities. The potential challenges, I think,</p> <p>25 potentially relate to just bringing in an external</p>
<p>Page 194</p> <p>1 A. Hold on. I lost you there. Which sentence</p> <p>2 you at?</p> <p>3 Q. I'm continuing that same sentence. "They</p> <p>4 reviewed top succession candidates --</p> <p>5 A. Yes.</p> <p>6 Q. -- "including Mr. Spence, and discussed the</p> <p>7 potential time lines for their readiness and key</p> <p>8 development priorities for each such candidate."</p> <p>9 A. Yeah, it does say that.</p> <p>10 Q. But you're saying you didn't go over any</p> <p>11 candidates other than Mr. Spence, you didn't review time</p> <p>12 lines for anyone other than Mr. Spence; is that correct?</p> <p>13 MR. CIOFFI: Objection. Asked and answered.</p> <p>14 Mischaracterizes what he said about the emergency</p> <p>15 successors. Could you repeat the question?</p> <p>16 BY MR. SABA:</p> <p>17 Q. Yes. It's your position that with respect to</p> <p>18 CEO, you didn't provide any other candidates other than</p> <p>19 Mr. Spence and that you didn't provide time lines for</p> <p>20 readiness and/or the development priorities for any</p> <p>21 other candidates other than Mr. Spence; is that right?</p> <p>22 A. For the permanent CEO successor position,</p> <p>23 that's correct, because that was the board's view, that</p> <p>24 he was the only qualified internal successor candidate</p> <p>25 we had.</p>	<p>Page 196</p> <p>1 candidate at that level is always more risky.</p> <p>2 I know the board's number one desire they</p> <p>3 presented would be to, if we have a qualified internal</p> <p>4 candidate, that would be the person that gets put into</p> <p>5 the role any time we have an opening at that level.</p> <p>6 Q. The next sentence reads, "In addition, in</p> <p>7 response to additional director questions,</p> <p>8 Mr. Carmichael and Mr. Shaffer discussed details of</p> <p>9 development priorities and planning to cultivate</p> <p>10 internal candidates for the role and the expected time</p> <p>11 lines for completion of such development plans and</p> <p>12 candidate readiness."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Who were the internal candidates that would be</p> <p>16 cultivated for the role?</p> <p>17 A. Tim Spence was the only qualified candidate</p> <p>18 the board viewed as an internal candidate.</p> <p>19 Q. Why does it say candidates, plural?</p> <p>20 A. I didn't write the minutes. I don't know. I</p> <p>21 wasn't the board secretary.</p> <p>22 Q. What was the expected timeline for completion?</p> <p>23 A. I don't know. I don't recall.</p> <p>24 Q. Next sentence reads, "Mr. Shaffer also</p> <p>25 reviewed the emergency planning succession candidates</p>

<p style="text-align: right;">Page 197</p> <p>1 and reviewed the readiness of Mr. Tuzun and other key 2 leaders to manage investor, employee, and customer 3 concerns in the event of an unplanned or emergency CEO 4 succession scenario." 5 Do you see that? 6 A. I do. 7 Q. Who were the other emergency planning 8 succession candidates that were reviewed, other than 9 Mr. Tuzun? 10 A. In the 2019 talent deck, we had Tayfun Tuzun, 11 Phil McHugh, and another board member, I believe. 12 Q. Do you specifically recall reviewing the 13 readiness of Phil McHugh with respect to being a 14 succession candidate for emergency -- excuse me, an 15 emergency planning succession candidate? 16 A. I don't recall the specific discussions around 17 Tayfun or Phil. I think what this is referring to is 18 other key leaders to manage investor employee 19 and customer concerns. 20 Emergency succession is a critical point in 21 time decision the board would have to make. So it's 22 Greg and my job and the two roles we had back then to 23 present candidates to the board. Ultimately they could 24 decide on someone else if they wanted to as an urgency 25 successor. And what I mean by a point in time, if you</p>	<p style="text-align: right;">Page 199</p> <p>1 of the recommendations or information presented by you 2 and Mr. Carmichael with respect to the CEO candidate and 3 with respect to this Mr. Spence? 4 A. No. 5 Q. Did any of the board of directors disagree 6 with any of the information presented by you and 7 Mr. Carmichael regarding the potential external 8 candidates and the potential challenges created by 9 appointment of an external candidate? 10 A. I don't really remember the conversation, 11 don't recall it around the external candidates. 12 MR. SABA: You wanted to take a break? Is 13 that what you said? 14 MR. CIOFFI: If you're finished with that line 15 of questioning. I don't want to prolong this. I 16 want you to finish that line and then we can move 17 on. 18 MR. SABA: Yeah. I'm fine. 19 THE VIDEOGRAPHER: The time is 3:42 p.m. We 20 are going off the record. 21 * * * 22 23 24 25</p>
<p style="text-align: right;">Page 198</p> <p>1 take a look at the banking situation that we just went 2 through in March and April from Silicon Valley Bank, 3 First Republic, etc., that's a time period where if your 4 CEO in a bank got incapacitated, died, whatever, that we 5 needed an emergency, my guess is the board would 6 probably choose the CFO in that period of time, because 7 that's somebody you really need in that role that knows 8 the street, knows the investors, knows how to manage 9 liquidity and capital because that's their day-to-day 10 job. So that's I think what that is getting at there 11 with the different stakeholders and a point in time of 12 when an emergency succession plan would have to be 13 enacted. 14 Q. You and Mr. Carmichael are the only people 15 doing presentations to the board regarding the potential 16 succession time lines and candidates for chief executive 17 officer; is that correct? 18 A. Yeah. Just like any topic that gets put in 19 front of the board, it's management's responsibility to, 20 you know, present the data, but clearly the board and 21 the board members at Fifth Third have whatever 22 discussions they want to have, ask any questions, ask 23 for additional information, etc. That's very common in 24 any public company. 25 Q. Did any of the board members disagree with any</p>	<p style="text-align: right;">Page 200</p> <p>1 (The previous testimony is Confidential -- 2 Subject to Protective Order.) 3 (A recess was taken from 3:42 p.m. to 4 3:56 p.m.) 5 THE VIDEOGRAPHER: The time is 3:56 p.m. We 6 are back on the record. 7 (Deposition Exhibit 23 is marked for 8 identification.) 9 BY MR. SABA: 10 Q. Mr. Shaffer, you've been handed Exhibit Number 11 23, which is Bates stamped Fifth Third McHugh 071635 12 through 071709; is that correct? 13 A. Correct. 14 Q. Are you able to identify Exhibit Number 23 for 15 me? 16 A. It's the 2018 Fifth Third Bank Employee 17 Viewpoints Survey Results Briefing by Aon. 18 Q. Have you seen this document before? 19 A. Yes. 20 Q. And these are the results of the employee 21 viewpoint surveys that you were talking about before; is 22 that correct? 23 A. For that particular year, yes. 24 Q. Okay. And Fifth Third pays to have this done 25 every year; is that right?</p>

<p>Page 201</p> <p>1 A. We do. I can't say it's every year, but it's 2 pretty much every year, yes. 3 Q. Do you know how much Fifth Third pays to have 4 this done each year? 5 A. I do not. 6 Q. Do you know what's involved in the process of 7 obtaining the employee viewpoint surveys? 8 A. I'm sorry, what do you mean? 9 Q. Do you understand what the process is in order 10 to put together the employee viewpoint surveys? 11 A. Yeah. I think representatives from the bank 12 work with the third-party. Typically we use a couple 13 different third-parties over time and they have a 14 standard methodology that we employ, and maybe add or 15 delete questions that we want to get specific 16 information on our workforce. 17 Q. The employee engagement scores for various 18 departments are then used to measure the performance of 19 members of the enterprise committee; isn't that right? 20 A. I'm sorry, what's the question? 21 Q. The employee viewpoint survey scores are then 22 used as a measure of performance of the members of the 23 enterprise committee; isn't that right? 24 MR. CIOFFI: Objection. Lack of foundation. 25 If you know.</p>	<p>Page 203</p> <p>1 engagement; is that correct? 2 A. Yes. 3 Q. And they define employee engagement, as 4 indicated on this page, is a "state of emotional 5 and intellectual involvement that motivates employees to 6 do their best work"; is that correct? 7 A. That's what it says here. And just to 8 clarify, specifically with Concentric, there are 6 9 questions that are the say, stay, and strive questions 10 that do drive a score, but there are also 16 or some 11 number of dimensions that are also other areas that 12 employees, you know, provide feedback on. So there are 13 multiple components to this survey that gets done. 14 Q. So there's a lot of data that they bring in to 15 analyze with respect to the results of the survey of the 16 employee; is that correct? 17 A. They being Concentric? 18 Q. They being Concentric, right? 19 A. Yes. 20 Q. And that's why Fifth Third uses this 21 third-party source, as they're able to bring in a more 22 objective view and analysis of where the employees 23 aren't and what level they are engaged, correct? 24 A. Yeah, as well as all the other dimension 25 activities, yeah.</p>
<p>Page 202</p> <p>1 THE WITNESS: It's a component that's looked 2 at and included in self-assessments as well as 3 could be commented on by the manager. 4 (Deposition Exhibit 24 is marked for 5 identification.) 6 BY MR. SABA: 7 Q. Mr. Shaffer, I've also handed you 8 Exhibit Number 24, which is Bates stamped Fifth Third 9 McHugh 071710 through Fifth Third McHugh 071802; is that 10 correct? 11 A. That is correct. 12 Q. Can you identify that document for me, please? 13 A. It is entitled, "2019 Fifth Third Bank 14 Employee Viewpoints Survey Results Briefing" dated 15 November 1, 2010 (sic) from Concentric. 16 Q. Now, if I can refer you to Fifth Third McHugh 17 071796, please? 18 A. You're in Exhibit 24, correct? 19 Q. That is correct. 20 A. Could you give me a page number again? 21 Q. 071796. It's page 85, I believe, of the 22 document. 23 A. Okay. 24 Q. You'd agree that the purpose of these employee 25 viewpoint surveys is to measure the level of employee</p>	<p>Page 204</p> <p>1 Q. Sure. 2 A. Or dimension boxes. 3 Q. We talked about the midyear reviews before and 4 your involvement in those. What is your involvement 5 with the annual reviews of the enterprise committee? 6 A. My involvement would be to help Greg 7 Carmichael document his comments, basically. I don't 8 think any company would expect the CEO to sit down and 9 type up performance reviews, so Greg meets with me and 10 provides me with the information that he wants included 11 in the performance reviews, the ratings he wants 12 included in those performance reviews. So we have a 13 meeting to do that or meetings to do that. I, you know, 14 type those comments up, give them back to Greg. He 15 reviews them, makes any changes he wants to. 16 Q. Is there any other additional information you 17 provide? 18 A. I'm sorry? 19 Q. Is there any additional information you 20 provide beyond that? 21 A. In terms of? 22 Q. With respect to the annual performance 23 reviews? 24 A. That's not very specific. What are you 25 specifically asking about here?</p>

<p>Page 205</p> <p>1 Q. You talked about you type up information for 2 him based upon the information he provides to you; is 3 that correct?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you gather any other information for him 6 other than what he has you type up?</p> <p>7 A. I don't recall necessarily, gathering other 8 information. Greg always has a very good pulse on the 9 performance of his team members. I mean, he might from 10 time to time ask me to go gather up information on 11 different topics, but I can't recall specifics. 12 (Deposition Exhibit 25 is marked for 13 identification.) 14 BY MR. SABA:</p> <p>15 Q. Mr. Shaffer, you've been handed Exhibit 25, 16 which is Bates stamp Fifth Third McHugh 000469. Can you 17 identify that for me, please?</p> <p>18 A. Sure. It's an email from me dated January 3, 19 2020 to Greg Carmichael.</p> <p>20 Q. And the subject is the Carmichael Direct 21 Report Reviews; is that correct?</p> <p>22 A. For 2019, yes.</p> <p>23 Q. And if you can read that first section of the 24 email for me, please, through the bullet points.</p> <p>25 A. Read the bullet points?</p>	<p>Page 207</p> <p>1 questions, thoughts. We have time scheduled at 8:30 2 Monday that we can use to discuss as well. 3 "I should have proposed compensation 4 recommendations early next week. Lorin Olson is 5 preparing them based on the market data we shared with 6 the human capital, HCCC, in December." 7 Q. In this email you note, "I added employee 8 viewpoint scores for each person." 9 A. Uh-huh. 10 Q. Those employee viewpoint survey scores, those 11 weren't provided to the board, were they? 12 A. I'm not sure. I do know we provide employee 13 viewpoint survey result information to the board, but I 14 don't believe we had it in the deck, the talent deck 15 that was covered in December, but the board does have -- 16 gets a debrief probably including materials on the 17 employee viewpoint survey results. That's my 18 recollection. 19 Q. Do you have any documentation that would show 20 that they're given the detail of the employee viewpoint 21 survey scores for each person in the enterprise 22 committee? 23 A. I don't recall any information like that. 24 Q. There's nothing in the talent deck that would 25 indicate the employee viewpoint survey scores for each</p>
<p>Page 206</p> <p>1 Q. Yeah. Beginning with Greg and through the 2 bullet points, please. 3 A. Sure. "Greg, Happy New Year. I hope you had 4 a great holiday season with your family. Attached is a 5 Word document with draft performance reviews for all of 6 your direct reports. A few items: I included proposed 7 ratings for each 'what' goal category. The rating 8 options are exceptional, exceeds, achieves, needs 9 improvement, and unsatisfactory. 10 "I also included the ratings for each 'how' 11 goal category. These ratings were included in the deck 12 we used for the talent discussion with the board. The 13 rating options are strength, effective, and opportunity. 14 "See the attached Excel document for a summary 15 of the proposed 'what' and 'how' ratings for each of 16 your direct reports. I like to look at them on one page 17 for alignment purposes. 18 "I directly leveraged the key strengths and 19 key opportunities for each person from the deck we used 20 for the board meeting. 21 "I added" -- excuse me -- "I added employee 22 viewpoints survey scores for each person. 23 "I don't have the manage risk ratings from 24 Frank yet. I will add them when I get them. 25 "Please review and let me know if you have any</p>	<p>Page 208</p> <p>1 person in the enterprise committee, is there? 2 A. As I just stated, there wasn't employee 3 viewpoint survey data in the talent deck for December 4 '19. 5 Q. What are the managed risk ratings from Frank? 6 A. The chief risk officer, now in my capacity, is 7 responsible for performing independent risk assessments 8 of each of what we call category one employees, which is 9 a regulatory definition. In our case as a bank, it's 10 really the -- in most cases the direct reports of the 11 CEO, but there are a few others as well. 12 Q. Why aren't the employee viewpoint survey 13 scores for each person included in the talent deck? 14 A. I don't recall. 15 Q. Who made the decision that the employee 16 viewpoint survey scores for each person should not be 17 included in the talent deck? 18 A. I don't recall there was ever a decision made 19 as we're assessing the talent and potential and so forth 20 of the individuals in the talent deck. The employee 21 viewpoint survey results, like I described earlier, are 22 not indications of the qualifications of being, you 23 know, at that level or being promoted to the next level 24 or a lateral move to the next level within the 25 enterprise team.</p>

<p>Page 209</p> <p>1 They're important. We care about it. We</p> <p>2 spend money on it each year. We have made nice strides</p> <p>3 as a company implementing actions from those results to</p> <p>4 help improve employee engagement and other aspects of</p> <p>5 our employee's experience within the company.</p> <p>6 (Deposition Exhibit 26 is marked for</p> <p>7 identification.)</p> <p>8 BY MR. SABA:</p> <p>9 Q. Mr. Shaffer, you've been handed what's been</p> <p>10 marked as Exhibit Number 26, Fifth Third McHugh 000492</p> <p>11 through Fifth Third McHugh 000511.</p> <p>12 A. Correct.</p> <p>13 Q. Can you identify this document for me, please?</p> <p>14 A. Yeah, these would be, as it indicates, the</p> <p>15 final version dated January 10, 2020, 20th, of Greg's</p> <p>16 performance reviews for his direct reports.</p> <p>17 Q. Referring you to Fifth Third McHugh 000496 and</p> <p>18 Fifth Third McHugh 000497, can you identify those two</p> <p>19 pages for me, please?</p> <p>20 A. Those relate to Phil McHugh's 2019 review from</p> <p>21 Greg.</p> <p>22 Q. Under the "what" category for Phil McHugh, it</p> <p>23 lists that he exceeds with respect to strategic and</p> <p>24 financial management, operational efficiency, and</p> <p>25 customer experience, and then just achieves with talent</p>	<p>Page 211</p> <p>1 Q. What -- bless you.</p> <p>2 Where is there any -- just starting with these</p> <p>3 first full paragraphs on talent optimization -- where is</p> <p>4 there any negative statement regarding the performance</p> <p>5 of Phil McHugh?</p> <p>6 A. This section is not intended to have negatives</p> <p>7 in it, necessarily. It doesn't mean there aren't for</p> <p>8 some, but those are really -- the negatives are the</p> <p>9 opportunities, or intended to be in the opportunities</p> <p>10 for 2020 section.</p> <p>11 Q. Where is there any indication that he has not</p> <p>12 engaged in timely execution of talent management actions</p> <p>13 to make certain the very best leaders are in key</p> <p>14 management positions?</p> <p>15 A. It says it in the last bullet point on 497.</p> <p>16 Q. I understand what you're saying, it says it's</p> <p>17 an opportunity for him?</p> <p>18 A. Yes.</p> <p>19 Q. But where does it ever express in detail how</p> <p>20 he's failed to do that?</p> <p>21 A. Well, by an opportunity, that means that he</p> <p>22 hasn't lived up to the expectations of having it as an</p> <p>23 exceeds item.</p> <p>24 Q. So referring back to the first full paragraph</p> <p>25 under -- under the "what" category, the fourth to last</p>
<p>Page 210</p> <p>1 optimization.</p> <p>2 A. Uh-huh.</p> <p>3 Q. What, if anything, in the narrative below that</p> <p>4 would indicate that Phil only achieves with respect to</p> <p>5 talent optimization?</p> <p>6 MR. CIOFFI: Objection. The document speaks</p> <p>7 for itself.</p> <p>8 BY MR. SABA:</p> <p>9 Q. Go ahead. You can answer?</p> <p>10 MR. CIOFFI: You may answer.</p> <p>11 THE WITNESS: If you go to the next page, the</p> <p>12 last bullet point relates to "ensure timely</p> <p>13 execution of talent management actions to make</p> <p>14 certain the very best leaders are in key</p> <p>15 positions."</p> <p>16 It's back to what I testified to earlier</p> <p>17 around Phil's talent, actions, and activity and</p> <p>18 management are not strengths of his.</p> <p>19 BY MR. SABA:</p> <p>20 Q. Where -- anywhere in this narrative does it</p> <p>21 indicate that he does that poorly?</p> <p>22 A. It's an opportunity for 2020. And it would go</p> <p>23 back to, like I said earlier too, since I was a CHRO in</p> <p>24 2017, I'm sure Greg had comments in each of his reviews</p> <p>25 along those lines.</p>	<p>Page 212</p> <p>1 sentence reads, "He is a great leader for his people,</p> <p>2 inspires followership, and is always there to assist</p> <p>3 them in their success."</p> <p>4 A. Uh-huh.</p> <p>5 Q. How is that not talent optimization?</p> <p>6 A. That's -- let me -- again, no one's ever said</p> <p>7 that Phil wasn't a competent manager capable of managing</p> <p>8 people at a certain level.</p> <p>9 Q. Let's be clear. It says he's a great leader,</p> <p>10 not a competent manager.</p> <p>11 A. Yeah. Yeah, yeah, and he does. And I think</p> <p>12 this inspires followership can be interpreted as a</p> <p>13 fault, too, because as I described earlier, there were</p> <p>14 some situations where Phil did not take timely actions</p> <p>15 and other executives had to on employees. So I agree</p> <p>16 that a lot of his employees really liked him.</p> <p>17 Q. And so how is always being there to assist</p> <p>18 employees in their success a weakness in talent</p> <p>19 optimization?</p> <p>20 MR. CIOFFI: Objection. Argumentative.</p> <p>21 THE WITNESS: We're not saying it's a</p> <p>22 weakness. He got an achieved rating. He would</p> <p>23 have got a -- needs improvement or whatever the</p> <p>24 lowest rating would have been, but it's not a</p> <p>25 strength.</p>

<p>Page 213</p> <p>1 BY MR. SABA:</p> <p>2 Q. My question goes back in this narrative</p> <p>3 section.</p> <p>4 Is there any indication of anything that Phil</p> <p>5 McHugh does negatively with respect to talent</p> <p>6 optimization?</p> <p>7 A. Not here, but like I said, in the opportunity</p> <p>8 section, which you have to look at collectively for the</p> <p>9 rating assessment.</p> <p>10 Q. In fact, there is nothing negative there,</p> <p>11 correct?</p> <p>12 A. On Bates 497, he needs to ensure he timely</p> <p>13 executes talent management actions, make sure the very</p> <p>14 best leaders are in key positions. That's not an</p> <p>15 indicator of an overall positive.</p> <p>16 Q. Staying with that first full paragraph, the</p> <p>17 last sentence reads, "Phil's 2019 employee viewpoint</p> <p>18 survey score for all his areas totaled 73 percent --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- compared to the Bancorp score of 72</p> <p>21 percent, exclusive of legacy MB employees."</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. How is that score of all of his areas totaling</p> <p>25 73 percent, how is that calculated?</p>	<p>Page 215</p> <p>1 A. He had the regions, WAM, and business banking.</p> <p>2 Q. Was he responsible for wealth and asset</p> <p>3 management?</p> <p>4 A. Yes. I'm sorry, I said WAM. It is wealth and</p> <p>5 asset management.</p> <p>6 Q. Is his score calculated based on a combination</p> <p>7 of those scores, or do you know how his individual score</p> <p>8 is calculated?</p> <p>9 A. I don't know how his individual score is</p> <p>10 calculated. We do not, at Fifth Third, calculate any</p> <p>11 scores outside of what Concentric provides to us. So</p> <p>12 each executive would have received scores representing</p> <p>13 employees in their areas.</p> <p>14 Q. The report we see as Exhibit 24, does that</p> <p>15 include the individual enterprise committee member</p> <p>16 scores?</p> <p>17 MR. CIOFFI: Objection. Lack of foundation.</p> <p>18 The document speaks for itself. No foundation laid</p> <p>19 that he knows what's in it.</p> <p>20 THE WITNESS: It doesn't look like this</p> <p>21 particular document gives it for each individual</p> <p>22 enterprise member. There is -- there are scores</p> <p>23 for lines of business and staff functions. There</p> <p>24 are scores for each region individually, as well as</p> <p>25 scores for each of the 12 largest Fifth Third work</p>
<p>Page 214</p> <p>1 A. I don't know. Concentric calculates that, so</p> <p>2 I don't know what their methodology is.</p> <p>3 Q. Does Concentric give a separate report for</p> <p>4 each employee?</p> <p>5 A. Did Concentric -- 2019. I'm sorry?</p> <p>6 Q. Does Concentric give a separate report for</p> <p>7 each employee?</p> <p>8 A. I believe they give it for each manager that</p> <p>9 has a certain number of employees responding, that might</p> <p>10 be five employees. I'm not sure, but there's a de</p> <p>11 minimis number that if isn't achieved, of course at the</p> <p>12 enterprise level you would get more than a minimus</p> <p>13 number.</p> <p>14 Q. Is it based on the survey scores for the areas</p> <p>15 that Phil was responsible for?</p> <p>16 A. Yes. The 73?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. Are you the one that provided that number?</p> <p>20 A. Concentric provided that number.</p> <p>21 Q. Do you recall which areas Phil was responsible</p> <p>22 for at this period of time?</p> <p>23 A. In 2019, he would have had the regions, I</p> <p>24 believe, yeah.</p> <p>25 Q. And what else?</p>	<p>Page 216</p> <p>1 cities, and by officer level and so forth, but I</p> <p>2 don't see, in this particular document, by each</p> <p>3 enterprise member.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Going back to Fifth Third McHugh 000496, the</p> <p>6 narrative section we see in the "what" area, who wrote</p> <p>7 this?</p> <p>8 A. Greg Carmichael would have dictated what he --</p> <p>9 what he wanted in here. This particular email in 1/3,</p> <p>10 the process Greg and I had in place was after we got</p> <p>11 through the board meetings in December, we would spend</p> <p>12 some time together where he would, you know, basically</p> <p>13 tell me what he wants in each individual direct reports,</p> <p>14 reviews. I obviously spent some time probably over the</p> <p>15 holidays putting that together, and that's the draft I</p> <p>16 sent to him on January 3rd, for him to look at and</p> <p>17 comment on.</p> <p>18 But it's my job as a CHRO to be very plugged</p> <p>19 in and understand the performance of each enterprise</p> <p>20 member. That's why I can, you know, I'm sure he and I,</p> <p>21 when we met in December, discussed ratings and so forth,</p> <p>22 but that's why -- plus this was my, you know, almost</p> <p>23 third, you know, going into my third year in the role.</p> <p>24 I knew the enterprise team pretty well from an HR</p> <p>25 perspective.</p>

<p>Page 217</p> <p>1 Q. So ultimately Greg Carmichael reviews and 2 approves of the language in here; is that correct? 3 A. Absolutely. 4 Q. And the one common theme from what Greg 5 Carmichael sets forth in January 2020 is that Phil 6 McHugh is a great leader, correct? 7 MR. CIOFFI: Objection. Counsel, you're not 8 testifying. Is that a question? 9 BY MR. SABA: 10 Q. Is that right? 11 MR. CIOFFI: Could you ask it as a question, 12 please. 13 BY MR. SABA: 14 Q. Mr. Shaffer? 15 A. I'm sorry. I didn't understand the question. 16 Q. The one common theme conveyed by 17 Mr. Carmichael in his description of Phil McHugh in 18 January of 2020 is that Phil McHugh is a great leader, 19 correct? 20 MR. CIOFFI: Objection. The document speaks 21 for itself. That's not -- at least that's not how 22 I would read it. 23 BY MR. SABA: 24 Q. Correct? 25 A. That is not what the common theme is here. It</p>	<p>Page 219</p> <p>1 A. It does. 2 Q. Moving to the last paragraph, first sentence, 3 "Phil continues to do a great job of providing 4 outstanding executive leadership to many of corporate 5 activities and events, and willing to assume such 6 leadership responsibilities." 7 A. It does say that. 8 Q. It repeats over and over again, not just 9 good -- 10 A. Uh-huh. 11 Q. -- not just capable, but great; isn't that 12 right? 13 A. That word is used in here, and that's why Phil 14 received an overall exceeds rating. But, again, if we 15 are comparing and contrasting the skill sets and 16 capabilities for the type of roles that Phil has had and 17 the role that he had this year, we would expect somebody 18 at this level with this level of experience to have a 19 performance review like this and be very capable of 20 doing their job. It doesn't mean they have the 21 qualifications or capabilities to be the next president 22 or CEO of Fifth Third Bank. 23 Q. And going back to the employee viewpoint 24 survey scores, in terms of individual scores, Phil had 25 the highest employee viewpoint survey score of any</p>
<p>Page 218</p> <p>1 talks about him being a senior and versatile leader, 2 strong understanding, strong team player. Phil did a 3 nice job, Phil proactively, Phil continues to do a great 4 job. So there's different ways Greg is describing the 5 different components of Phil's performance for that 6 year, but, again, none of us have ever said that Phil is 7 not a competent, you know, good manager of those people 8 and areas. 9 Q. So let's be clear. It's not competent, it's 10 not just good. Correct me if I'm wrong, but doesn't the 11 fourth last sentence of the first paragraph read, "He is 12 a great leader for his people, inspires followership and 13 is always there to assist them in their success." 14 Is that correct? 15 A. Yeah, as it relates to that sentence, yeah. 16 Q. Then moving on to the third sentence of the 17 second paragraph, "Phil did a great job leading the 18 regional ops review in 2019 and continues to visit each 19 region as needed to more deeply understand strengths and 20 opportunities as well as to assess talent"; is that 21 correct? 22 A. It does say that. 23 Q. The next sentence reads, "Phil provided great 24 leadership to build support for key moves in the regions 25 in 2019." Isn't that right?</p>	<p>Page 220</p> <p>1 member of the enterprise committee; isn't that right? 2 A. I don't know that. I don't have that 3 information. 4 Q. Well, let's continue to look through Exhibit 5 Number 26. This is the final reviews for all members of 6 the enterprise committee; isn't that right? 7 A. Yes. 8 Q. Why don't we first go to Fifth Third McHugh 9 000500 and 000501. 10 A. 500, you said? 11 Q. Yes, and 501. 12 A. Okay. 13 Q. And this is the -- can you identify these two 14 pages for me? 15 A. Tim Spence's review. 16 Q. Okay. And who would have written the language 17 that we see for Tim Spence's review as of January 2020? 18 A. You mean documented what Greg wanted in here? 19 Q. Yes. 20 A. I would have documented, as I indicated 21 earlier. 22 Q. And who would have determined what should be 23 in here in the final version? 24 A. Greg Carmichael. 25 Q. With respect to Tim Spence, there's a note at</p>

<p>Page 221</p> <p>1 the bottom of the third full paragraph that says,</p> <p>2 "Credit fraud losses relayed to the credit card</p> <p>3 portfolio were over plan by 10 percent and need</p> <p>4 continued significant focus"; is that correct?</p> <p>5 A. It does say that.</p> <p>6 Q. And then with respect to "Tim's 2019 employee</p> <p>7 viewpoint survey score results were mixed."</p> <p>8 A. Uh-huh.</p> <p>9 Q. And it talks about "consumer was" -- then it</p> <p>10 just goes to visual areas as opposed to his individual</p> <p>11 score. "Consumer was 74 percent, up from 5 percent.</p> <p>12 The chief strategy officer was 46 percent."</p> <p>13 A. Uh-huh.</p> <p>14 Q. "Payments was 57 percent. And mortgage was 62</p> <p>15 percent." Is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And the -- with respect to 46 percent and the</p> <p>18 57 percent, those are two of the lowest in the entire</p> <p>19 company, aren't they?</p> <p>20 A. I would have to look at all the scores to be</p> <p>21 able to make that conclusion.</p> <p>22 Q. It goes on to indicate "Tim needs to ensure</p> <p>23 action plans are identified and implemented to</p> <p>24 significantly improve employee engagement in these</p> <p>25 areas"; isn't that right?</p>	<p>Page 223</p> <p>1 MR. CIOFFI: Objection. Lack of foundation.</p> <p>2 THE WITNESS: I don't know. We'd have to go</p> <p>3 back and look at the financial information that the</p> <p>4 board received throughout the year. My guess is</p> <p>5 they would have received financial information that</p> <p>6 included revenue line items, expense line items,</p> <p>7 loss line items. So I couldn't make that</p> <p>8 conclusion without going back and looking at all</p> <p>9 the financial information that was provided to the</p> <p>10 board.</p> <p>11 BY MR. SABA:</p> <p>12 Q. You can't say one way or another? It was not</p> <p>13 information provided in the talent deck, was it?</p> <p>14 A. It definitely was not. But I'm saying it</p> <p>15 could have definitely been provided throughout the year</p> <p>16 and the financial results and updates that are provided</p> <p>17 to the board at least quarterly.</p> <p>18 Q. And, again, with respect to the opportunities</p> <p>19 that we now see listed on his review, it again</p> <p>20 emphasizes the employee engagement items above.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Because it says "in addition to the employee</p> <p>23 engagement items above."</p> <p>24 A. Yeah.</p> <p>25 Q. Then it also talks about other issues that</p>
<p>Page 222</p> <p>1 A. That's correct.</p> <p>2 Q. He was having problems; isn't that correct?</p> <p>3 A. Yeah. I wouldn't call them problems. I</p> <p>4 think, as I indicated earlier, there was initially and</p> <p>5 continue to be, you know, lots of change in those areas,</p> <p>6 you know, you'd have to look at the different factors</p> <p>7 that existed within those areas at that time and what</p> <p>8 was going on. Consumer, for instance, went up 5</p> <p>9 percent. I guess that's from when Tim took over for</p> <p>10 Phil. So it went up. Mortgage was down slightly, but</p> <p>11 you've got to remember where interest rates were at that</p> <p>12 time, and the volume of business activity would be going</p> <p>13 through that group and the stress on those employees.</p> <p>14 So you can't look at one single thing,</p> <p>15 including the leadership or the structure,</p> <p>16 organizational structure within a particular area, to</p> <p>17 make any conclusions on individual employee engagement</p> <p>18 scores.</p> <p>19 Q. The information, again, you already indicated</p> <p>20 the employee engagement scores were not provided to the</p> <p>21 board and the talent deck. Also the information</p> <p>22 regarding the credit fraud losses related to the credit</p> <p>23 card portfolio being over plan by 10 percent needed</p> <p>24 continued significant focus. That information was also</p> <p>25 not provided to the board, was it?</p>	<p>Page 224</p> <p>1 were not addressed in the talent deck to the board, does</p> <p>2 it?</p> <p>3 A. Yeah. This is a more, you know, granular</p> <p>4 assessment that Greg would do for each individual, and</p> <p>5 we all have things that we have to work on. Any leader</p> <p>6 does.</p> <p>7 Q. In addition, on the opportunities for 2020,</p> <p>8 another point of information not provided to the board</p> <p>9 was where it indicates he needs to "be more proactive in</p> <p>10 assessing talent and taking action when necessary";</p> <p>11 isn't that right?</p> <p>12 A. I'm sorry, where are you.</p> <p>13 Q. I'm on page 000501, I'm looking at the third</p> <p>14 bullet point and the last sentence in the third bullet</p> <p>15 point.</p> <p>16 A. Yes. Again, this is a much more granular</p> <p>17 summary than would be, you know, provided to the board.</p> <p>18 The board needs the big picture of things that are the</p> <p>19 more key things for people to work on. There are lots</p> <p>20 of things that Greg or any manager in the company</p> <p>21 that would work on with their employees at a more</p> <p>22 granular level.</p> <p>23 Q. Well, that statement doesn't appear to be</p> <p>24 granular, it's more broad in terms of assessing talent</p> <p>25 and taking action when necessary; isn't that right?</p>

<p>1 MR. CIOFFI: Objection. Argumentative. Lack 2 of foundation. But you may answer. 3 THE WITNESS: I don't remember the context. I 4 don't recall the context of that particular 5 sentence. So I don't know if it spoke to one 6 particular situation or more. I don't know. 7 BY MR. SABA: 8 Q. And you indicated before that opportunities 9 are negatives, is that right? You said that with 10 respect to Phil McHugh, at least? 11 A. There are certain items that could be 12 negatives, that people need to work on. There are other 13 items that could be just for your continued development 14 and, you know, growth. There could be those types of 15 items as well. 16 Q. Because obviously it indicates that Tim Spence 17 in bullet point four needed to continue to "focus on the 18 operationalization of our digital investments to build 19 out a complete digital solution as defined in our 20 strategic plan." 21 A. Right. 22 Q. Clearly that wasn't being done; is that right? 23 A. It was absolutely being done. What Greg 24 wanted Tim to do is to continue to really focus on it 25 because he's the only leader we had in the company that</p>	<p>Page 225</p> <p>1 I wasn't in the review, so I don't know how those were 2 discussed with each individual executive. 3 Q. By March 28th of 2020, you and Greg Carmichael 4 were already picking the day when Tim Spence would 5 become president of Fifth Third, correct? 6 MR. CIOFFI: Objection. Lack of foundation. 7 Argumentative. 8 THE WITNESS: That's incorrect. The board is 9 the one that makes the decision on who and when 10 someone becomes the CEO. 11 BY MR. SABA: 12 Q. You weren't already working on deciding what 13 day they would start as president? 14 A. Again, it wasn't our job to decide the 15 ultimate date. It's our job to facilitate the board's 16 executing a succession process. 17 (Deposition Exhibit 27 is marked for 18 identification.) 19 BY MR. SABA: 20 Q. Mr. Shaffer, you've been handed Exhibit Number 21 27, Fifth Third McHugh 006260. Can you identify that 22 for me, please? 23 A. It is an email dated March 28, 2020 from me to 24 Greg Carmichael. 25 Q. Can you go ahead and read that email into the</p> <p>Page 227</p>
<p>1 had the capabilities to drive that strategy. So he 2 wanted to make that an emphasis for Tim, not that Tim 3 needed it because he knows that, but that's a positive 4 continue to focus on that. No different than the next 5 bullet, "deepen exposure to certain key stakeholders." 6 That's not a negative. A lot of that depended on Greg, 7 our CFO, getting Tim that exposure. 8 Q. So just to be clear, opportunities may not be 9 a negative, they may be a positive? 10 A. They could be both. 11 Q. Okay. 12 A. There are some both in these things. 13 Q. And that's true for all the employees, right, 14 and all the members of the enterprise committee? 15 A. Sure. 16 Q. So with respect to Phil McHugh, where you were 17 referring them to as negatives, those could be 18 positives? 19 A. I didn't refer to all of them as negatives, 20 just that last bullet point on talent. I didn't read 21 the other ones. 22 And I can't remember specifically on those 23 what Greg was thinking about in terms of, was Phil 24 lacking here, needed to do more of or continue what he 25 had been doing. And just a point of emphasis from Greg.</p> <p>Page 226</p>	<p>1 record for me, please? 2 A. "Greg, getting back to some succession 3 planning work. I am working to set up a call for Guy, 4 you and I for Thursday or Friday of this upcoming week. 5 Attached are three organizational charts: 6 "Current enterprise org chart. Proposed 7 enterprise org chart for either October 2020 or January 8 2021. Proposed enterprise org chart for April 2022. 9 "These org charts and timing are based on our 10 discussions and prior to consideration of any timing 11 impacts of our succession plans related to the 12 Coronavirus or the CFPB matter. The following are data 13 points and assumptions: 14 "Investor day is December 10, 2020. Tim to 15 president on either October 1, 2020 (if we want to 16 announce before investor day) or January 1, 2021. 17 Possibly indicate to Phil at time of Tim's promotion to 18 president that he will be named COO upon Tim's promotion 19 to CEO. 20 "Greg retires on the day of our annual 21 shareholders meeting in April 2022. Tim to CEO and 22 president. Greg remains as chairman of the board until 23 April 2023. 24 "Just want to keep our discussions and thought 25 processes going. Let me know your thoughts. Thanks,</p> <p>Page 228</p>

<p>Page 229</p> <p>1 Bob."</p> <p>2 Q. So as indicated in this email March 28th, you</p> <p>3 and Greg were already deciding on what day Tim Spence</p> <p>4 would become president of Fifth Third, whether it would</p> <p>5 be October 1st or January 1st; is that right?</p> <p>6 MR. CIOFFI: Objection. The document speaks</p> <p>7 for itself.</p> <p>8 THE WITNESS: No. This is really following up</p> <p>9 from the December 2019 talent session with the</p> <p>10 board. Again, the board had been, you know, really</p> <p>11 driving towards their consensus of Tim's</p> <p>12 qualifications and capabilities to be our next CEO</p> <p>13 and president. We had talked at that time about,</p> <p>14 you know, getting an independent review done by</p> <p>15 Guy. That is in reference to RHR International.</p> <p>16 And this is simply just Greg and I putting</p> <p>17 together some different options and considerations</p> <p>18 for the board. As I mentioned before, at the end</p> <p>19 of the day the board makes the ultimate decisions</p> <p>20 on who would assume the CEO role and the timing</p> <p>21 around that.</p> <p>22 Q. Well, it's pretty clear that you and Greg are</p> <p>23 picking the when; is that correct?</p> <p>24 MR. CIOFFI: Objection. Lack of foundation.</p> <p>25 Counsel, you're testifying a lot today. That's not</p>	<p>Page 231</p> <p>1 Phil at time of Tim's promotion to president that he had</p> <p>2 be named COO upon Tim's promotion to CEO."</p> <p>3 The Phil that's referred to there is Phil</p> <p>4 McHugh; is that right?</p> <p>5 A. Correct.</p> <p>6 Q. And the reason that you wanted to indicate to</p> <p>7 Phil, that both you and Greg Carmichael want to indicate</p> <p>8 to Phil that he would be named COO when Tim becomes CEO</p> <p>9 is because you knew that Phil was at risk of leaving if</p> <p>10 you were going to name -- if the board would name Tim</p> <p>11 Spence president instead of Phil McHugh; isn't that</p> <p>12 right?</p> <p>13 MR. CIOFFI: Objection. Lack of foundation.</p> <p>14 Assumes facts not in evidence. Argumentative.</p> <p>15 THE WITNESS: I was not aware of Phil being at</p> <p>16 risk at that time. I don't know how he could be at</p> <p>17 risk, given he had a very top level job in the</p> <p>18 company making, you know, over \$2 million a year.</p> <p>19 I found out, you know, after he quit the company</p> <p>20 that he did not want to report to Tim Spence.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Well, both you and Greg knew that Phil was at</p> <p>23 risk of leaving if Tim Spence was named president and</p> <p>24 CEO instead of him; is that right?</p> <p>25 MR. CIOFFI: Objection. Lack of foundation.</p>
<p>Page 230</p> <p>1 what the document says, but you can answer.</p> <p>2 THE WITNESS: We were merely putting together</p> <p>3 some options that we discussed in the December '19</p> <p>4 talent session.</p> <p>5 BY MR. SABA:</p> <p>6 Q. And the document confirms that it's pretty</p> <p>7 automatic that once Tim Spence becomes president, he</p> <p>8 would then become CEO?</p> <p>9 A. I'm sorry?</p> <p>10 Q. It also confirms that it's generally perceived</p> <p>11 to be automatic that once Tim Spence becomes president,</p> <p>12 then he will subsequently become CEO, correct?</p> <p>13 MR. CIOFFI: Objection.</p> <p>14 THE WITNESS: It does not conclude that at</p> <p>15 all. These are simply options and so forth that we</p> <p>16 were -- it's the responsibility of the CEO and the</p> <p>17 CHRO to outline and put some straw men together for</p> <p>18 the board to ultimately consider and make their</p> <p>19 decision.</p> <p>20 It could have been on this time line, some</p> <p>21 other time line, it could have been Tim, could not</p> <p>22 have been Tim. So it's up to the board as the</p> <p>23 final decision-maker.</p> <p>24 BY MR. SABA:</p> <p>25 Q. The third bullet point, "Possibly indicate to</p>	<p>Page 232</p> <p>1 BY MR. SABA:</p> <p>2 Q. Is that correct?</p> <p>3 A. I do not recall that.</p> <p>4 Q. You didn't state to anybody that both you and</p> <p>5 Greg Carmichael were aware that Phil McHugh was at risk</p> <p>6 of leaving if Tim Spence was the one promoted to</p> <p>7 president and eventually CEO?</p> <p>8 A. I do not recall that.</p> <p>9 Q. Your final sentence says, "Just want to keep</p> <p>10 our discussion and thought process going."</p> <p>11 Had you and Greg Carmichael had ongoing</p> <p>12 discussions regarding these specific topics that we see</p> <p>13 here today?</p> <p>14 A. No. Again, this really stems back to the</p> <p>15 March -- I'm sorry, the December 2019 talent discussion.</p> <p>16 In the time period from then until March, there's a lot</p> <p>17 going on in the company from the yearend perspective,</p> <p>18 performance management, etc.</p> <p>19 Q. Did you and Greg Carmichael have a subsequent</p> <p>20 discussion regarding the bullet points we see in</p> <p>21 Exhibit 27?</p> <p>22 A. I don't recall a discussion.</p> <p>23 Q. Do you recall any of the further</p> <p>24 communications that you had Greg -- with Greg Carmichael</p> <p>25 regarding the bullet points we see in Exhibit 27?</p>

<p>1 A. I'm sure we had further discussions. I don't 2 recall specifics or time periods. 3 Q. Consistent with Exhibit Number 27 and the 4 timeline or the optional timelines you give in bullet 5 point number two, was Tim Spence voted in as president 6 as part of the September 21, 2020 board meeting? 7 A. I'm sorry, I didn't follow that question. 8 Q. Your second bullet point indicates "Tim to 9 president on either October 1, 2020 (if we want to 10 announce before investor day) or January 1, 2021"; do 11 you see that? 12 A. Uh-huh. 13 Q. Do you recall -- 14 A. I do. 15 Q. -- when Tim Spence was approved as president 16 of Fifth Third Bank? 17 A. He became president, the board made a decision 18 in September or October of 2020. 19 Q. There was an initial board meeting where the 20 process was discussed, and then a final resolution that 21 was signed in October, correct? 22 A. I believe that's correct. I'd have to look at 23 the documentation. 24 Q. When did Tim Spence move from president to 25 president and CEO?</p>	<p>Page 233</p> <p>1 BY MR. SABA: 2 Q. Mr. Shaffer, you were explaining what the 3 CFPB matter was, correct? 4 A. Correct. 5 Q. And you said that -- explain that to me again. 6 What was the CFPB matter? 7 A. I think you asked me what it related to and I 8 said it related to sales practices, litigation 9 that we've had outstanding. 10 Q. That was an investigation by the CFPB 11 regarding accounts that were being opened without 12 customer knowledge in the consumer bank; is that right? 13 MR. CIOFFI: Objection. Lack of foundation. 14 If you know what it's about. 15 THE WITNESS: I mean, I don't know all the 16 details, but generally that was the allegations and 17 investigation work around it. It's been 18 outstanding for a long period of time. 19 BY MR. SABA: 20 Q. Actually they weren't just allegations. Fifth 21 Third admitted to opening accounts without customer 22 knowledge in the consumer bank. 23 A. We did. We admitted to a very small number of 24 accounts that were opened. We self-identified those. 25 We remediated those.</p> <p>Page 235</p>
<p>1 A. July of 2022, I believe. 2 Q. When did Greg Carmichael retire? 3 A. He would have retired as CEO at that time that 4 Tim was appointed by the board to be the CEO, and then 5 he became our executive chairman. 6 Q. Which is generally consistent with your last 7 two bullet points, correct? 8 A. Yep, generally consistent. I mean, it had 9 been discussed with the board that Greg would, you know, 10 stay on for some period of time as executive chairman of 11 the board after the board appointed Tim if they decided 12 to do that. 13 Q. What is the CFPB matter? 14 A. I believe that relates to the ongoing sales 15 practices litigation that we've had with the CFPB for a 16 large number of years. 17 MR. SABA: We can go off the record. 18 THE VIDEOGRAPHER: The time is 4:48 p.m. 19 We're going off the record. 20 21 (A recess was taken from 4:48 p.m. to 22 4:59 p.m.) 23 THE VIDEOGRAPHER: The time is 4:59 p.m. 24 We're back on the record. 25</p> <p>Page 234</p>	<p>1 Q. But the investigation is still ongoing. The 2 bank recognizes it has a very serious matter; is that 3 right? 4 MR. CIOFFI: Objection. Lack of foundation. 5 You're testifying, counsel. 6 BY MR. SABA: 7 Q. Is that correct? 8 A. The investigation and the litigation is still 9 outstanding. I guess you'd have to talk to the 10 attorneys on the level of seriousness they believe it 11 presents at this point in time from a legal perspective. 12 Q. Well, you understood it to be a serious 13 matter; is that right? 14 A. From what perspective do you mean? 15 Q. Well, it was one of the reasons why -- which 16 delayed Greg Carmichael in terminating the employment of 17 Susan Zaunbrecher because he didn't want to do it in the 18 middle of the CFPB investigation. 19 A. Yeah, I think there were some thoughts on 20 Greg's part, depending on where this went, where it 21 ended up, if it ever got resolved. Greg likes to get 22 things done and get things resolved, so those don't have 23 to be handed off. Unfortunately, it's outside of our 24 control. And we've been actively working. 25 Again, you'd have to talk to the legal team on</p> <p>Page 236</p>

<p style="text-align: right;">Page 237</p> <p>1 all the ins and outs of what they've been working on</p> <p>2 with the matter ever since, but it's a longstanding</p> <p>3 item. A number of banks have a similar or other related</p> <p>4 CFPB matters that are out there.</p> <p>5 Q. And it would create concern for anybody who</p> <p>6 would be put in that consumer lead role; isn't that</p> <p>7 right?</p> <p>8 A. I'm sorry, what was the question?</p> <p>9 Q. It would create concerns for anybody who would</p> <p>10 be in that consumer lead role; isn't that right?</p> <p>11 A. I think it would be a concern for the</p> <p>12 executive management team in general any time we have</p> <p>13 outstanding litigation.</p> <p>14 Q. You mentioned Guy, G-u-y. So his name is</p> <p>15 pronounced Gee, not Guy?</p> <p>16 A. I believe it's pronounced Gee, yes.</p> <p>17 Q. Guy Beaudin, is that his last name?</p> <p>18 A. Yes.</p> <p>19 Q. And he's is with RHR; is that correct?</p> <p>20 A. RHR.</p> <p>21 Q. What is RHR?</p> <p>22 A. RHR is an independent firm that provides</p> <p>23 executive level assessments of potential candidates for</p> <p>24 positions like president, CEO, they may have a search</p> <p>25 arm as well to them, but I can't guarantee that.</p>	<p style="text-align: right;">Page 239</p> <p>1 sorry, June 8, 2020 to Greg Carmichael.</p> <p>2 Q. And can you read the -- and the subject is Guy</p> <p>3 conversation; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. Can you read the first three bullet points,</p> <p>6 please?</p> <p>7 A. "Guy agrees that if Tim is the successor,</p> <p>8 don't add Tayfun and Phil formally. Although, he would</p> <p>9 recommend, at a minimum, we discuss with Marsha that</p> <p>10 she/the board is okay with only having Tim assessed by</p> <p>11 Guy. He said he has seen a few boards surprised in the</p> <p>12 past the CEO/CHRO did have at least one" -- "did have at</p> <p>13 least one other internal candidate assessed.</p> <p>14 "Schedule a 90-minute call for Greg, Guy, and</p> <p>15 me to assess and modify the attached CEO profile used in</p> <p>16 2015. Guy would also use this time to get feedback from</p> <p>17 each of us on Tim. We will try to schedule this for" --</p> <p>18 "for this week or next.</p> <p>19 "Guy wants to interview four of Tim's other</p> <p>20 peers, not including me, and four of his direct reports.</p> <p>21 Guy wants us to pick the interviewees. My</p> <p>22 recommendations are below. Let me know what you think."</p> <p>23 Q. Who was Guy agreeing with that if Tim is the</p> <p>24 successor, don't add Tayfun and Phil?</p> <p>25 A. He's agreeing with a conversation that I had</p>
<p style="text-align: right;">Page 238</p> <p>1 Q. Why did Fifth Third retain the services of RHR</p> <p>2 in the spring of 2020?</p> <p>3 A. So the board wanted to do that. The board</p> <p>4 utilized RHR clear back to 2015, the last time that the</p> <p>5 CEO position was being assessed for a potential new</p> <p>6 candidate.</p> <p>7 Q. How did the board communicate to you or</p> <p>8 Mr. Carmichael that they wanted you to use RHR?</p> <p>9 A. We first talked about it in the December 2019</p> <p>10 talent discussion, that we would utilize RHR for the</p> <p>11 next CEO succession process.</p> <p>12 Q. Was that a suggestion made by a member of the</p> <p>13 board -- strike that.</p> <p>14 Was that a suggestion made by Mr. Carmichael</p> <p>15 or was that made by another member of the board?</p> <p>16 A. I don't recall the initial suggestion,</p> <p>17 although the board absolutely wanted to and directed me</p> <p>18 to engage RHR for that process.</p> <p>19 (Deposition Exhibit 28 is marked for</p> <p>20 identification.)</p> <p>21 BY MR. SABA:</p> <p>22 Q. Mr. Shaffer, you've been handed Exhibit Number</p> <p>23 28, which is Bates stamped Fifth Third McHugh 006414.</p> <p>24 Can you identify that for me, please?</p> <p>25 A. It is an e-mail from me dated June 8 -- I'm</p>	<p style="text-align: right;">Page 240</p> <p>1 with Guy based off of the discussions I had with him</p> <p>2 along the way, and what that relates to is this is my</p> <p>3 first time going through the process as a CHRO to engage</p> <p>4 RHR or any third-party to do this type of work, and when</p> <p>5 I originally talked to Guy, I said, you know, we wanted</p> <p>6 Tim to go through -- the board wanted Tim to go through</p> <p>7 the process, you know, we may have a couple of others</p> <p>8 because I was looking at the emergency successor</p> <p>9 candidates, who were Tayfun and Phil at that time, and I</p> <p>10 didn't know what the board wanted in terms of having</p> <p>11 those other two assessed.</p> <p>12 They clearly wanted Tim assessed because he</p> <p>13 was the most qualified candidate to be in the president</p> <p>14 and CEO position. Tayfun and Phil were not. But that's</p> <p>15 just me initially talking to Guy. And then once, you</p> <p>16 know, I went back to him and said, hey, the board</p> <p>17 believes that Tim is the only qualified successor, he</p> <p>18 recommended that don't have Tayfun and Phil run through</p> <p>19 the process if they're really not being considered for</p> <p>20 that role by the board.</p> <p>21 So his comment here about making sure that we</p> <p>22 check with Marsha and she's okay, Greg Carmichael did</p> <p>23 check with Marsha and Marsha agreed, and Greg</p> <p>24 communicated back to me that Marsha and -- representing</p> <p>25 the board only wants Tim to go through the process.</p>

<p>Page 241</p> <p>1 Q. When did you have the conversation with Guy 2 about Tim Spence, Tayfun, and Phil all being assessed? 3 A. I don't remember the exact date. 4 Q. Was it prior to December of 2019? 5 A. It would not have been. 6 Q. Was it after the board meeting in December? 7 A. It would have been sometime, I believe, in 8 February, March, of 2020, was probably my initial 9 discussion with him. 10 Q. And when did you determine that the board did 11 not want you to have Tayfun and Phil assessed? 12 A. As I just stated, Greg confirmed with Marsha 13 that since neither Tayfun or Phil were qualified to be 14 permanent successors, the board only wanted Tim to go 15 through it. 16 Q. When did Greg do that with Marsha? When did 17 he communicate with Marsha? 18 A. I don't know the exact date. 19 Q. Was it after this email? 20 A. I believe it would have had to have been, 21 yeah. 22 Q. You said before that you had a conversation 23 with Guy that -- about assessing Tim, Tayfun, and Phil, 24 and then you determined that Tim was the guy, and so you 25 spoke to Guy again and said that you don't need to do</p>	<p>Page 243</p> <p>1 Tayfun are not qualified to be permanent successors as 2 president and CEO? 3 A. It was not set forth in writing anywhere but 4 by definition emergency successor doesn't have 5 the qualifications to be the permanent successor. 6 Q. So based on your perception of what the board 7 was saying, you were initially person who communicated 8 to Guy that Tim should be the only one assessed, not 9 Phil, and not Tayfun? 10 A. It was not my perception. I participated in 11 discussions and heard the board directly say that Tim 12 was the only qualified successor internally that the 13 bank had. 14 Q. Exactly. That was your perception of what the 15 board was saying, correct? 16 MR. CIOFFI: Objection. You're arguing with 17 him. He said that wasn't his perception -- 18 MR. SABA: I don't know if he understands the 19 word perception. 20 BY MR. SABA: 21 Q. So you perceived what they said to you and 22 based on your perception of what they said to you, you 23 then made the decision to communicate to Guy that Tim 24 should be the only person that's assessed, not Tayfun 25 and Phil, correct?</p>
<p>Page 242</p> <p>1 Tayfun and Phil and he agreed? 2 MR. CIOFFI: Objection to the form of the 3 question. You're repeating his testimony, but 4 you're not repeating it accurately. So the form is 5 wrong. 6 THE WITNESS: Yeah. I did not determine that 7 Tim was the most qualified successor or the only 8 one to go through it. The board did. 9 BY MR. SABA: 10 Q. Who did Guy agree with that if Tim is the 11 successor, don't add Tayfun and Phil? Who is he 12 agreeing with? 13 A. As I stated earlier, that was the conversation 14 I had with him because I knew that the board did not 15 consider Phil or Tim -- Phil or Tayfun qualified 16 successors. So I wanted to clarify with him as we got 17 closer to getting the engagement in place what the board 18 wanted. 19 Q. How did you know the board did not consider 20 Phil or Tayfun to be qualified successors? 21 A. Based on my participation in the conversations 22 in December of 2019 in other talent succession 23 discussions with the board. 24 Q. So based on your -- was that set forth in 25 writing anywhere that Bill -- excuse me, that Phil and</p>	<p>Page 244</p> <p>1 MR. CIOFFI: Objection to the form. 2 Argumentative. Misstates his statement. 3 BY MR. SABA: 4 Q. Correct? 5 A. I heard the board talk about that in multiple 6 conversations in the different annual talent management 7 discussions that we had so -- 8 Q. Sure. But hearing is part of your perception. 9 So you perceived what they said and based on your 10 perception, not anything in writing, you went to Guy and 11 said only assess Tim; don't assess Phil and Tayfun, 12 correct? 13 MR. CIOFFI: Objection to the form of the 14 question. Misstates his prior testimony as a 15 question. And is inappropriate. 16 BY MR. SABA: 17 Q. Correct? 18 MR. CIOFFI: If you can answer. 19 THE WITNESS: What's the question again? 20 BY MR. SABA: 21 Q. Based on your perception of what the board 22 said, you communicated to Guy that Tim is the guy and 23 Tayfun and Phil should not be assessed? 24 A. I heard the board in discussions that that's 25 exactly what they said, that's what I said to Guy, and</p>

<p>1 that's what Greg confirmed back with Marsha, that Tim 2 was the only qualified successor and only run him 3 through. That was the board's decision. 4 Q. And going back to Greg's confirmation with 5 Marsha, when did Greg confirm that with Marsha? 6 A. I don't know the exact date or time. 7 Q. How did Greg confirm that with Marsha? 8 MR. CIOFFI: Objection. Asked and answered. 9 MR. SABA: I asked him when. "How" is a 10 different question. 11 THE WITNESS: What's the question? I'm sorry? 12 BY MR. SABA: 13 Q. How did he confirm it with Marsha? 14 A. I don't know if it was a phone call 15 or whatever. I don't know how he did it. You'd have to 16 ask him. 17 Q. Is there any documentation in writing of 18 Greg's confirmation with Marsha that only Tim Spence and 19 no one else should be assessed for president and CEO by 20 an independent third-party? 21 A. Not that I'm aware of. 22 Q. How did you become aware that Greg had 23 communicated with Marsha about Tim being the only person 24 assessed by RHR? 25 A. Greg told me.</p>	<p>Page 245</p> <p>1 Q. You and Greg Carmichael remained actively 2 involved in the whole RHR assessment process; isn't that 3 right? 4 MR. CIOFFI: Objection to the form of the 5 question. Lacks foundation. 6 THE WITNESS: Could you repeat the question? 7 BY MR. SABA: 8 Q. You and Greg Carmichael remained actively 9 involved in RHR's assessment of Tim Spence; isn't that 10 right? 11 A. Sure. Acting at the direction of the board as 12 the current CEO and the CHRO, chief human resources 13 officer, it's our responsibility to help the board 14 administer the process. 15 Q. So specifically you were involved in terms of 16 reviewing, modifying the CEO profile that was going to 17 be used to assess him; is that correct? 18 A. The winning formula profile you're talking 19 about? 20 Q. Correct. 21 A. Yeah, that we started with the 2015 final 22 version that the board had created with RHR. The 23 request of the board was for Greg, Guy, and I to look at 24 that and make any determinations, particularly from 25 Guy's perspective, if there's anything that should be</p>
<p>Page 246</p> <p>1 Q. When did Greg tell you that? 2 A. I don't remember the exact date or time. 3 Q. And that was a verbal conversation? 4 A. Yes. 5 Q. Was it ever communicated to you why the board 6 did not want Tayfun or Phil to be assessed by RHR? 7 MR. CIOFFI: Objection. Asked and answered. 8 THE WITNESS: Could you repeat the question? 9 BY MR. SABA: 10 Q. Yes. Was it ever communicated to you why the 11 board did not want Tayfun or Phil to be assessed? 12 A. It was in the context of them not having the 13 qualifications to be the next president or CEO of the 14 company. 15 Q. Did Greg ever communicate to you what Marsha 16 said as to why she did not think Phil or Tayfun should 17 be assessed in addition to Tim Spence? 18 A. He communicated that he talked to Marsha and 19 the fact that the board was not considering them as 20 legitimate qualified candidates to be in either one of 21 those positions, that the board did not want them 22 assessed. 23 Q. Then none of those conversations are 24 documented in writing; is that correct? 25 A. Not that I'm aware of.</p>	<p>Page 248</p> <p>1 modified, changed, added. There were really minor 2 insignificant changes from the 2015 one. 3 The board, I sent that out to -- I believe I 4 sent it out to the entire human capital compensation 5 committee in draft form to get their review and any 6 feedback to be incorporated into the final profile that 7 the board would utilize. 8 Q. You were also actively involved in revising 9 RHR's assessment of Tim Spence; isn't that right? 10 MR. CIOFFI: Objection. Lack of foundation. 11 You may answer. 12 THE WITNESS: I made probably some proposed 13 changes to it. At the end of the day, RHR remained 14 control -- in control of the process, the results, 15 the reporting. They had a professional 16 responsibility to deliver the results that they 17 assessed accurately, and they did that to the 18 board. Guy Beaudin came in himself and delivered 19 and met with the board, discussed the results. The 20 board had plenty of opportunity to ask Guy any 21 questions that they wanted to. 22 BY MR. SABA: 23 Q. Well, Tim Spence himself became concerned 24 about some of the comments they were making about him 25 and complained to you about those; isn't that right?</p>

<p>Page 249</p> <p>1 A. I don't really remember him complaining.</p> <p>2 Q. Ultimately did you indicate to Tim Spence that</p> <p>3 you would have the opportunity to debrief Guy and give</p> <p>4 context to any of the areas of concern that he had</p> <p>5 regarding Tim Spence?</p> <p>6 MR. CIOFFI: Objection to the form of the</p> <p>7 question. Lacks a foundation as to areas of</p> <p>8 concern. They don't appear in the document.</p> <p>9 THE WITNESS: I'm sorry, could you repeat the</p> <p>10 question?</p> <p>11 MR. SABA: Sure.</p> <p>12 BY MR. SABA:</p> <p>13 Q. Didn't you indicate to Tim Spence that you</p> <p>14 would have the opportunity to debrief Guy and give him</p> <p>15 context regarding any areas of concern that Tim Spence</p> <p>16 had?</p> <p>17 A. I'm sure I did. My responsibility as the</p> <p>18 chief human resources officer is to understand any</p> <p>19 feedback that our executive team is getting, any member</p> <p>20 of our executive team in ensuring that, you know, if</p> <p>21 they have the right context and understand what that</p> <p>22 feedback is so that they can act on.</p> <p>23 Q. Ultimately, you and Greg were involved in</p> <p>24 editing and revising the presentation that RHR would</p> <p>25 make to the board for the final approval of Tim Spence</p>	<p>Page 251</p> <p>1 until he was offered it again, there had been some</p> <p>2 pretty significant changes to it.</p> <p>3 We put the Fifth Third securities brokerage</p> <p>4 business into the consumer bank. We put the</p> <p>5 consumer car business in there. We broke it out</p> <p>6 from the payments business. We acquired MB</p> <p>7 Financial, as we discussed earlier, which</p> <p>8 significantly increased our retail footprint in the</p> <p>9 Chicagoland area, and we were embarking on a</p> <p>10 significant strategic initiative to build hundreds</p> <p>11 of branches in the southeast section of the United</p> <p>12 States.</p> <p>13 So there were pretty significant additional</p> <p>14 responsibilities and accountabilities that Phil</p> <p>15 would have had with that job. Additionally, at</p> <p>16 that time, Greg had offered Phil an additional</p> <p>17 \$100,000 of base compensation, which would have</p> <p>18 also increased his variable compensations bonus by</p> <p>19 about another 110,000, so another couple hundred</p> <p>20 thousand dollars, but still near \$2 1/2 million was</p> <p>21 in the making there, and it was a top five job in</p> <p>22 the company, in the proxy. So a very significant</p> <p>23 role. And it amounted to almost 50 percent of the</p> <p>24 revenue of the company was that business.</p> <p>25</p>
<p>Page 250</p> <p>1 as president; isn't that right?</p> <p>2 MR. CIOFFI: Objection. Lack of foundation.</p> <p>3 THE WITNESS: I believe after we reviewed the</p> <p>4 draft report from Guy, as would be expected, we</p> <p>5 provided Guy with some proposed changes and, again,</p> <p>6 it was up to Guy to accept our reject those</p> <p>7 proposed changes. And at the end of the day it was</p> <p>8 his responsibility and RHR's responsibility to</p> <p>9 report from a professional responsibility</p> <p>10 perspective the results to the board.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Who decided that when Tim Spence would be</p> <p>13 promoted to president, that Phil McHugh would be demoted</p> <p>14 to the lead consumer role?</p> <p>15 MR. CIOFFI: Objection to the form of the</p> <p>16 question. No foundation.</p> <p>17 THE WITNESS: I think there might be two</p> <p>18 questions in there. The first is the decision to</p> <p>19 promote Tim to president of the company would have</p> <p>20 been made by the board of directors. Secondly,</p> <p>21 Phil McHugh was not demoted by being offered the</p> <p>22 consumer role. In fact, the consumer role that</p> <p>23 Phil was being offered was a little different than</p> <p>24 the first time he had been head of the consumer</p> <p>25 bank. From the time he was the head originally</p>	<p>Page 252</p> <p>1 BY MR. SABA:</p> <p>2 Q. And it would come with the ongoing CFPB</p> <p>3 litigation that he would be responsible for; isn't that</p> <p>4 right?</p> <p>5 MR. CIOFFI: Objection. Lack of foundation.</p> <p>6 Those events happened years ago.</p> <p>7 THE WITNESS: I agree, the events did happen</p> <p>8 years ago and the hands of that matter are in our</p> <p>9 legal department right now. So the consumer</p> <p>10 business is not handling that matter anymore.</p> <p>11 BY MR. SABA:</p> <p>12 Q. And Phil was already going to be an employee</p> <p>13 in the proxy state, he was already going to be one of</p> <p>14 the top five highest employees in 2019 as it was,</p> <p>15 correct?</p> <p>16 MR. CIOFFI: Objection. Lack of foundation.</p> <p>17 But if you can answer.</p> <p>18 THE WITNESS: I don't know that. I don't know</p> <p>19 how there would be a basis for that, what time</p> <p>20 period was that discussed? Because if it was</p> <p>21 discussed any time during the year, early in the</p> <p>22 year, like a performance management or time or when</p> <p>23 he received his compensation in February for 2019,</p> <p>24 anything could happen between then and the end of</p> <p>25 the year in terms of executives leaving, us having</p>

<p>1 to hire other executives. So you really don't nail 2 down that, you know, distinction until later in the 3 year. 4 BY MR. SABA: 5 Q. You acknowledge, though, that that was a role 6 he already had, notwithstanding your claims that there 7 were some additional duties that came with it. He had 8 already been in that position, correct? 9 A. I do acknowledge that he served as the head of 10 consumer bank previously, but again, there were 11 significant new responsibilities in there, again, almost 12 50 percent of the revenue of the company, much more 13 significant than the revenue of the regions had 14 business. 15 Q. He would also have to report to Tim Spence; is 16 that correct? 17 A. He would. 18 Q. It also required that he would give up the 19 leadership of the regional presence; is that correct? 20 A. Yes. That was being moved to Tim Spence. He 21 also -- I'm sorry. He also, you know, along with that 22 role, would continue to have a significant benefits 23 package. He continued to have his office, his executive 24 parking space. He was the only executive in our company 25 that had two country club memberships as well. He was</p>	<p>Page 253</p>	<p>1 BY MR. SABA: 2 Q. As part of the demotion to the consumer lead 3 role, Phil was also losing leadership in the middle 4 market banking and wealth and asset management; isn't 5 that right? 6 MR. CIOFFI: Counsel, you know, repeating 7 something that's not true doesn't make it true. 8 Objection to the form of your question. He's asked 9 and answered and explained why it's not a demotion. 10 The law's clear on the issue, but you keep using 11 the term. So -- 12 MR. SABA: Because the law is clear on the 13 issue. 14 MR. CIOFFI: Absolutely. 15 MR. SABA: As part of his demotion -- 16 MR. CIOFFI: So why where you asking this 17 question? 18 MR. SABA: -- from the consumer lead role, 19 Phil was also required to give up leadership of 20 middle market banking and wealth and asset 21 management; isn't that right. 22 THE WITNESS: It was not a demotion. When you 23 look at the enterprise level roles, I mean, these 24 are big roles, significant roles in the company. 25 Managing lots of people. Lots of resources, highly</p>	<p>Page 255</p>
<p>1 maintaining those. 2 Q. Why was the leadership of the regional 3 presence being moved to Tim Spence? 4 A. Greg wanted to move it to Tim Spence to get 5 that experience and exposure running the regions. Not 6 uncommon in the past where that role has been used for 7 development and exposure. I think we probably have had 8 somewhere in the neighborhood of five executives in that 9 region's role in the last decade. 10 Q. He wanted Spence to get the experience that 11 Phil already had of leading the regional banks, 12 something that Greg Carmichael noted Phil was a great 13 leader of; isn't that right? 14 MR. CIOFFI: Objection to the form of the 15 question. Assumes facts not in evidence. 16 THE WITNESS: Yeah. If you go back to that 17 performance review discussion, I mean, Greg was 18 being very complimentary to Phil's operational 19 leadership and the job that he does. I mean, we 20 would not have people on the enterprise team that 21 weren't great operators and operating leaders. 22 Doesn't mean they have the capabilities and 23 qualifications to be the next president or CEO of 24 the company. 25</p>	<p>Page 254</p>	<p>1 compensated. These are lateral moves, you know, at 2 the enterprise level. 3 BY MR. SABA: 4 Q. That wasn't my question. 5 A. I'm sorry, repeat your question. 6 Q. As part of that demotion, Phil was required to 7 give up leadership of the middle market banking and 8 wealth and asset management; isn't that right? 9 MR. CIOFFI: Objection to the form of the 10 question. It's argumentative. He's asked -- 11 you've asked it. Now this is the third time. 12 MR. SABA: He hasn't answered. 13 MR. CIOFFI: You keep asking questions 14 redundantly until you attempt to get the answer you 15 want. He has answered it. 16 MR. SABA: He hasn't answered the question. 17 MR. CIOFFI: He has answered the question. 18 BY MR. SABA: 19 Q. Do you understand the question about giving up 20 middle market, the leadership of middle market banking 21 and wealth and asset management as part of the demotion 22 of the consumer lead role? 23 A. It was not a demotion. Those pieces of 24 businesses are being moved as well. 25 Q. And where were they being moved to?</p>	<p>Page 256</p>

<p style="text-align: right;">Page 257</p> <p>1 A. I can't remember exactly middle market if that 2 went to commercial at that time, I can't remember. 3 Q. Those both went to Tim Spence, didn't they? 4 A. I don't recall. I know wealth and asset 5 management I believe did. I can't remember middle 6 market if we had put it in commercial at that time under 7 I guess Kevin Lavender's leadership at that time. 8 Q. Either way, they were moved away from Phil 9 McHugh; isn't that right? 10 A. Yes, it did. 11 (Phil McHugh exits the room.) 12 (The following testimony is Confidential -- 13 Subject to Protective Order.) 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 259</p> <p>1 Q. What did you mean by that? 2 A. What I meant by that was Phil was refusing to 3 take the consumer position that he was being offered in 4 the bank. He refused it on the day Greg offered it to 5 him on October 13th. He refused it again on the 14th. 6 I talked to him specifically on the 15th, and he refused 7 again, said he needed more time. We connected on the 8 16th, later, after this text message time, and that's 9 when Phil said he refused to accept the consumer 10 position. He wanted to keep the regions, and he did not 11 want to report to Tim Spence and he was quitting the 12 company. 13 Q. Let me clarify one thing. Did you send that 14 at 2:16 a.m.? 15 A. I doubt if I'd have been up that late on 16 vacation. I was in Michigan, I think it looks like 17 here. I might -- I don't know. Is this military time 18 or -- it looks like it is both. 19 MR. CIOFFI: It's a different time zone, 20 counsel. 21 THE WITNESS: That's true, too. 22 BY MR. SABA: 23 Q. Either way, with respect to that 24 communication, you're referring to Phil McHugh as the 25 Silver Fox, correct?</p>
<p style="text-align: right;">Page 258</p> <p>1 * * * 2 (Deposition Exhibit 29 is marked for 3 identification.) 4 BY MR. SABA: 5 Q. Mr. Shaffer, I've handed you what has been 6 marked as Exhibit Number 29. It's Bates stamped Fifth 7 Third McHugh 0213246 through Fifth Third McHugh 0213248. 8 MR. CIOFFI: Again, counsel, before you 9 continue, I'll renew my previous objection. This 10 is attorneys' eyes only document. All of the 11 material that's not relevant to this case needs to 12 be redacted. Should have been done before it was 13 used, but it needs to be done in the next day or so 14 before it goes into the permanent record. 15 BY MR. SABA: 16 Q. Mr. Shaffer, if I can refer you to -- this is 17 a text message exchange between yourself and Nancy 18 Pinckney from October 16, 2020. If I could refer you to 19 the text message you send on October 16, 2020 at 2:16 20 p.m.; do you see that? 21 A. 2:16? 22 Q. Yes. 23 A. Yes. 24 Q. And what did you write this? 25 A. "The Silver Fox could be out tomorrow."</p>	<p style="text-align: right;">Page 260</p> <p>1 A. Correct. 2 Q. And you were referring to him with respect to 3 the termination of his employment at Fifth Third Bank; 4 is that right? 5 MR. CIOFFI: Objection. Argumentative. 6 Misstates the facts. Go ahead. 7 THE WITNESS: No, he was not being terminated 8 from the company. He was offered one of the five 9 largest jobs in the company, and he was refusing to 10 take it. 11 BY MR. SABA: 12 Q. Well, when you say he could be out tomorrow, 13 you're saying he could be out of his employment 14 tomorrow; isn't that right? 15 A. Meaning that he could quit the company 16 tomorrow, yes. He was never terminated. 17 Q. Reading down October 16, 2020, 4:33 p.m., 18 Nancy Pinckney texts you, "Got it. PS, Phenise asked me 19 to pull Phil's LTI agreements (evaluating non-compete 20 clauses). 21 Do you see that? 22 A. I do. 23 Q. And your response is, "Okay, Phil has still 24 not talked to Greg or me today about his decision." 25 Correct?</p>

<p>Page 261</p> <p>1 A. My response -- yes.</p> <p>2 Q. Reading down to the bottom of Exhibit 29,</p> <p>3 October 17th, 4:07 p.m., you have a text message that</p> <p>4 starts, "I just sent this to Phil."</p> <p>5 A. Yes.</p> <p>6 Q. And it appears there is a crying emoji next to</p> <p>7 it, or laughing emoji -- laughing emoji?</p> <p>8 A. That is not mine. I don't know what that is.</p> <p>9 Q. And you sent the -- did you text Phil or did</p> <p>10 you email Phil?</p> <p>11 A. I texted him this note on the top of page</p> <p>12 0213247.</p> <p>13 Q. And go ahead and read that into the record.</p> <p>14 A. "Phil, I understand you reached out to Greg</p> <p>15 today. Since you indicated you were getting an</p> <p>16 attorney, please have your attorney contact Susan."</p> <p>17 Which would be Susan Zaunbrecher. "As I told you</p> <p>18 yesterday, since you refuse to take the consumer lead</p> <p>19 role you are voluntarily resigning from the company, as</p> <p>20 there is no other position available. As such, and as I</p> <p>21 indicated yesterday, you do not need to come into the</p> <p>22 office and your last day with the company will be</p> <p>23 October 30th."</p> <p>24 So this is in response on the 17th -- I'm</p> <p>25 sorry, the 16th -- when Phil and I talked and he</p>	<p>Page 263</p> <p>1 work that position, correct?</p> <p>2 A. He did.</p> <p>3 Q. But that was taken away from him, correct?</p> <p>4 A. It was being moved to Tim Spence. Greg</p> <p>5 Carmichael was the CEO. He was responsible for the</p> <p>6 assignment of his team, and that's what Greg wanted to</p> <p>7 do and offered Phil the consumer job, again, an expanded</p> <p>8 role from the prior time he had it with lots of perks</p> <p>9 and top five role.</p> <p>10 And I should point out, you mentioned earlier</p> <p>11 whether Phil would have been in the proxy that year</p> <p>12 based on his February compensation. To this day -- and</p> <p>13 you can look at our current proxy -- the consumer role</p> <p>14 is in our proxy. The regions head role is not in our</p> <p>15 proxy.</p> <p>16 Q. The individuals in the proxy is based upon the</p> <p>17 amount of salary they receive, right, the amount of --</p> <p>18 A. Total compensation.</p> <p>19 Q. Total compensation?</p> <p>20 A. There are certain positions that are required,</p> <p>21 the CEO position is required, the CFO position is</p> <p>22 required, and then it's basically I think if you have a</p> <p>23 COO, too, I think it's required, which we didn't have.</p> <p>24 But then it would be the next three top compensated</p> <p>25 employees, yes.</p>
<p>Page 262</p> <p>1 continued to refuse to take the consumer role, and said</p> <p>2 he only wanted the regions role and did not want to</p> <p>3 report to Tim. He asked me three times if I was -- if</p> <p>4 he was being terminated, three times I said absolutely</p> <p>5 not. You're receiving one of the top five positions in</p> <p>6 the company. So that was on the 16th.</p> <p>7 On the 17th, Greg called me, I was in Michigan</p> <p>8 again, and Greg said that Phil tried to call him and I</p> <p>9 advised Greg that we need to talk to Susan because Phil</p> <p>10 said he was getting an attorney. So I don't want the</p> <p>11 CEO or anybody else in the company talking to somebody</p> <p>12 that said they're getting an attorney. So that's the</p> <p>13 note that Susan instructed me to send to Phil.</p> <p>14 Q. You indicate no other positions were</p> <p>15 available; is that correct?</p> <p>16 A. That's what it says in this email, yes.</p> <p>17 Q. So no effort was made by Fifth Third to find a</p> <p>18 position that would be tolerable for Phil McHugh to</p> <p>19 retain his job at Fifth Third Bank?</p> <p>20 A. There were no other enterprise positions</p> <p>21 available at that time.</p> <p>22 Q. Why wasn't the regional bank's position</p> <p>23 available to Phil?</p> <p>24 A. Because it was being moved to Tim Spence.</p> <p>25 Q. But Phil had indicated to you that he would</p>	<p>Page 264</p> <p>1 Q. Correct.</p> <p>2 (Deposition Exhibit 30 and Exhibit 31 are</p> <p>3 marked for identification.)</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Shaffer, you've been handed two exhibits.</p> <p>6 If you can first grab Exhibit Number 31, Fifth Third</p> <p>7 McHugh 0213204.</p> <p>8 A. Okay.</p> <p>9 MR. CIOFFI: Counsel, again, this is</p> <p>10 attorneys' eyes only. There's material on here</p> <p>11 that is confidential, not relevant to the case,</p> <p>12 which needs to be redacted, as we've discussed, but</p> <p>13 go ahead.</p> <p>14 BY MR. SABA:</p> <p>15 Q. This is a text message exchange between you</p> <p>16 and Tim Spence referring you to the October 13, 2020</p> <p>17 text at 11:19 a.m. from you; do you see that?</p> <p>18 A. I'm sorry, what's the date, October --</p> <p>19 Q. October 13, 2020.</p> <p>20 A. Yeah.</p> <p>21 Q. It says, "Tayfun knows now about the moves.</p> <p>22 Very professional. Said he is not surprised and will be</p> <p>23 supportive. Silver Fox is next."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

<p>Page 265</p> <p>1 Q. And Tim Spence responds, "Nice. Do I need to 2 reach out to him right away? If not, I will just come 3 in early tomorrow and see him in person." 4 And you indicate, "Tomorrow would be fine." 5 And Tim Spence says, "Thumbs up." 6 A. Uh-huh. 7 Q. Referring back to your -- first, your text 8 message, the first sentence says, "Tayfun knows about 9 the moves" -- the moves. What moves are we talking 10 about that Tayfun knows about? 11 A. Those would have been about the moves of 12 moving the regions to Tim, offering Phil the consumer 13 bank. So Greg must have -- I'm surmising here -- talked 14 to Tayfun about that, and the -- talked to Phil, Greg 15 would talk to Phil next. 16 Q. So that's what is meant by Silver Fox is next; 17 is that right? 18 A. Greg would talk to him, yeah. 19 Q. And was the intent of what Greg would talk to 20 him about? 21 A. Would communicate the moves that he wanted to 22 make, with the regions to Tim, and Phil in the consumer 23 bank. 24 Q. On October 13 of 2020 at 1:10 p.m., you text 25 back to Mr. Spence, "Greg talked to Phil. Said it went</p>	<p>Page 267</p> <p>1 that Phil, you know, think it wouldn't go well. I 2 can't recall what this is about. 3 BY MR. SABA: 4 Q. What do you mean, you can't recall what this 5 is about? 6 A. Well, I know it's about the discussion Greg 7 had with Phil, but said it went better than expected. 8 I'm not sure -- I don't recall what that meant. 9 Q. Was it expected that it would not go well when 10 Phil McHugh was going to be told that he would not be 11 the next president of Fifth Third Bank? 12 MR. CIOFFI: Objection. Lack of foundation, 13 but you can answer. 14 THE WITNESS: I don't recall that. I don't 15 know why Phil would ever have thought he'd have 16 been the next president of Fifth Third Bank. 17 BY MR. SABA: 18 Q. Referring you to Exhibit 30, Fifth Third 19 McHugh 0123195, I'm referring you to the text, this is a 20 text message exchange again between you and Mr. Spence, 21 referring you to the text on October 17, 2020 at 2:52 22 p.m. And Tim Spence indicates, "Any further word from 23 the Silver" -- 24 A. Hold on, let me find it. 2:52, October 17th? 25 Q. Correct.</p>
<p>Page 266</p> <p>1 better than expected. Phil said he gets it. Makes 2 sense just needs to digest it. I expect him to ask me 3 for comp increase." 4 A. Yes. 5 Q. Did I read that correctly? 6 A. You did. 7 Q. What is meant where it said "it went better 8 than expected"? How was it expected to go? 9 A. I don't recall what that meant. 10 Q. Did you and Greg Carmichael both expect that 11 it was not going to go well because Phil McHugh expected 12 he was going to be the next president of Fifth Third 13 Bank? 14 MR. CIOFFI: Objection to the form of the 15 question. Lacks foundation. You may answer. 16 THE WITNESS: Can you repeat the question? 17 MR. SABA: Yes. 18 BY MR. SABA: 19 Q. With respect to the statement "it went better 20 than expected," it indicates that neither nor 21 Mr. Carmichael expected it was going to go well if Phil 22 McHugh was not being named the next president of Fifth 23 Third Bank? 24 MR. CIOFFI: Objection. Lack of foundation. 25 THE WITNESS: I don't ever recall believing</p>	<p>Page 268</p> <p>1 A. Is that 13:52 or would it -- 2 Q. 14:52. 3 A. 14:52. 4 Q. See that, the second to last line? 5 A. Okay. Got it. 6 Q. And Mr. Spence texts you, "Any further word 7 from the Silver Fox?" And then he texts, "I am 8 terrified he will show up on Monday." 9 A. Uh-huh. 10 Q. Do you see that? 11 A. I do. 12 Q. Do you know why Mr. Spence was terrified that 13 Mr. McHugh would show up on Monday? 14 A. I do not recall why -- why he said that. 15 Q. Were you aware of anything that he should be 16 terrified about? 17 A. No. I'm just speculating here that Phil would 18 maybe not -- or would come in even though he had quit 19 the company. I don't know. I don't recall what this is 20 about. 21 (Deposition Exhibit 32 is marked for 22 identification.) 23 BY MR. SABA: 24 Q. Mr. Shaffer, I've handed you what's been 25 marked as Exhibit Number 32, Fifth Third McHugh 0213207.</p>

<p>Page 269</p> <p>1 This is a text message exchange between yourself and</p> <p>2 Mr. Spence from October 17th and 18th; do you see that?</p> <p>3 MR. CIOFFI: Again, counsel, by way of</p> <p>4 objection, this is attorneys' eyes only. There's</p> <p>5 material on here that needs to be redacted,</p> <p>6 consistent with my earlier objections. But go</p> <p>7 ahead, you may answer.</p> <p>8 BY MR. SABA:</p> <p>9 Q. And just to be clear, although the Bates</p> <p>10 numbers are not consecutive, Exhibit Number 32 is a</p> <p>11 continuation of the text message exchange from</p> <p>12 Exhibit 30; do you see that?</p> <p>13 A. From Exhibit 30?</p> <p>14 Q. Correct. In other words, the text message at</p> <p>15 the end of Exhibit 30 that reads, "I'm terrified he will</p> <p>16 show up on Monday and that Frank will need to escort him</p> <p>17 out"; do you see that?</p> <p>18 A. I do.</p> <p>19 Q. You then later send a text message to</p> <p>20 Mr. Spence, "Here is what I sent to Phil." And it's the</p> <p>21 same text message that you also sent to Nancy Pinckney;</p> <p>22 is that right?</p> <p>23 A. Yeah. This is going to Tim. Did we look at</p> <p>24 something where I sent it to Nancy?</p> <p>25 Q. That was Exhibit 29.</p>	<p>Page 271</p> <p>1 job. He wanted the regions job. He did not want to</p> <p>2 report to Tim Spence.</p> <p>3 Interestingly enough, during any of these</p> <p>4 discussions I had with Phil here in these texts or</p> <p>5 verbally on the phone, did he ever one time question,</p> <p>6 object to, or even raise a concern about Tim being the</p> <p>7 president. It was never about that. And, in fact, in</p> <p>8 any of the vetting process, we talked about RHR earlier.</p> <p>9 RHR, everybody knew that process was going on. Phil was</p> <p>10 even interviewed in that process, and he never said</p> <p>11 anything to RHR. He never said anything to Greg</p> <p>12 Carmichael or me at all about his concern for not being</p> <p>13 vetted for that process.</p> <p>14 So Phil had firsthand knowledge of what was</p> <p>15 going on, and even as he was quitting the company here</p> <p>16 in mid-October, he never raised that as a concern. It</p> <p>17 really wasn't until the complaint that he filed that</p> <p>18 that came up.</p> <p>19 Q. Well, Phil was still under the impression that</p> <p>20 he was under consideration for president, wasn't he?</p> <p>21 MR. CIOFFI: Objection to the form of the</p> <p>22 question. Lack of foundation.</p> <p>23 THE WITNESS: I would not know why he would</p> <p>24 think that.</p> <p>25 BY MR. SABA:</p>
<p>Page 270</p> <p>1 A. Okay.</p> <p>2 Q. So you sent the same note to Tim Spence,</p> <p>3 correct?</p> <p>4 A. I did.</p> <p>5 Q. You then indicate on October 17th at 4:53 p.m.</p> <p>6 that, "Phil did respond. Bob, I was told by you and</p> <p>7 Greg that I did not need an attorney and told by you not</p> <p>8 to report to work on Monday." Correct?</p> <p>9 A. Let me get in here and see. The 17th, 2020 at</p> <p>10 16:53?</p> <p>11 Q. Correct.</p> <p>12 A. Yes, I see that.</p> <p>13 Q. Tim Spence responds, "We need to know whether</p> <p>14 or not he's gotten an attorney. You definitely did not</p> <p>15 tell him he didn't need one."</p> <p>16 And you responded, "I did not tell him that.</p> <p>17 I told him I was surprised he was asking in the</p> <p>18 conversation if he needed one." Excuse me, I read that</p> <p>19 incorrectly. "I did not tell him that. I told him I</p> <p>20 was surprised he was asking in the first conversation if</p> <p>21 he needed one. But in the third and fourth</p> <p>22 conversations, he told me that he was getting one"; is</p> <p>23 that correct?</p> <p>24 A. That's what it says. Yeah, again, this was in</p> <p>25 the context of Phil not wanting to accept the consumer</p>	<p>Page 272</p> <p>1 Q. You specifically, and Greg Carmichael both</p> <p>2 knew that, didn't you?</p> <p>3 A. I'm sorry?</p> <p>4 Q. You and Greg Carmichael both knew that,</p> <p>5 correct?</p> <p>6 A. Knew what, that he was being considered?</p> <p>7 Q. That he still thought he was being considered?</p> <p>8 A. I definitely did not.</p> <p>9 Q. Didn't you and Greg Carmichael both</p> <p>10 communicate to the board that you knew that Phil was at</p> <p>11 risk of leaving if Tim Spence was going to be promoted</p> <p>12 to president instead of Phil?</p> <p>13 A. I think that's two different concepts. One, I</p> <p>14 don't recall us ever communicating that to the board nor</p> <p>15 do I recall Phil and why he would ever think he's being</p> <p>16 considered for president.</p> <p>17 Q. So your response is no to that, correct?</p> <p>18 A. Well I guess -- repeat the question. It was a</p> <p>19 two-part question.</p> <p>20 Q. Sure. Didn't you and what Mr. Carmichael</p> <p>21 communicate to the board that you knew that Phil McHugh</p> <p>22 was at risk of leaving if Tim Spence was promoted to</p> <p>23 president instead of Phil?</p> <p>24 A. I do not recall that.</p> <p>25 Q. Referring back to Exhibit 32, on October 17,</p>

<p>Page 273</p> <p>1 2020, 5:07 p.m., Tim Spence ultimately communicates to</p> <p>2 you, "This is insane. The Silver Fox, of all people."</p> <p>3 Is that correct?</p> <p>4 A. That's what it says.</p> <p>5 Q. It's fair to say based on the review of these</p> <p>6 several text message chains and exhibits, that you and</p> <p>7 Mr. Spence, at least, regrettably refer to Phil McHugh</p> <p>8 as the Silver Fox outside his presence, correct?</p> <p>9 A. In these text messages, yes.</p> <p>10 Q. And that would also be true with respect to</p> <p>11 decisions regarding his future employment; isn't that</p> <p>12 correct?</p> <p>13 A. That is not correct.</p> <p>14 Q. These aren't discussions about Phil McHugh's</p> <p>15 employment with the bank?</p> <p>16 A. Maybe I misunderstood the question. Could you</p> <p>17 please reask it?</p> <p>18 Q. Sure. That you would also refer to Phil</p> <p>19 McHugh as the Silver Fox when discussing issues with</p> <p>20 respect to his employment with Fifth Third Bank?</p> <p>21 MR. CIOFFI: Objection to the form of the</p> <p>22 question. The messages speak for themselves.</p> <p>23 That's not what they say.</p> <p>24 THE WITNESS: I am not sure what you're</p> <p>25 asking, because Phil's future employment with the</p>	<p>Page 275</p> <p>1 relationship with the bank and/or escorting him out of</p> <p>2 the bank if he would come back to the bank after you</p> <p>3 believed his employment relationship had been</p> <p>4 terminated?</p> <p>5 MR. CIOFFI: Objection to the form of the</p> <p>6 question. Continues to be argumentative.</p> <p>7 THE WITNESS: First, he was never terminated.</p> <p>8 The escorting out of the bank refers to the</p> <p>9 following Monday after he quit and left --</p> <p>10 voluntarily resigned from the bank.</p> <p>11 BY MR. SABA:</p> <p>12 Q. So you're referring to him as a silver fox in</p> <p>13 relation to what you would call his voluntary</p> <p>14 resignation from the bank; isn't that right?</p> <p>15 A. We were just simply using the moniker and the</p> <p>16 badge of honor that he liked to be called. He called</p> <p>17 himself that, I stated that multiple times this morning.</p> <p>18 Q. Do you have any record at all -- I don't know</p> <p>19 if I asked you this before -- anything in writing where</p> <p>20 Phil McHugh communicated with you in writing and</p> <p>21 referred to himself as the Silver Fox?</p> <p>22 A. Do I have anything in writing?</p> <p>23 Q. Yes. Text message, email, anything, where he</p> <p>24 is communicating to you calling himself the Silver Fox?</p> <p>25 MR. CIOFFI: Objection to the form of</p>
<p>Page 274</p> <p>1 bank was the offer of the consumer role. So we</p> <p>2 weren't talking about or discussing anything</p> <p>3 related to any other type of employment or any</p> <p>4 other position with the bank. It was the consumer</p> <p>5 position.</p> <p>6 BY MR. SABA:</p> <p>7 Q. You're discussing his employment with the bank</p> <p>8 and the potential end of that employment and escorting</p> <p>9 him out of the bank if he tries to come back to the</p> <p>10 bank, and during that time you're both referring to him</p> <p>11 as the Silver Fox; isn't that correct?</p> <p>12 MR. CIOFFI: Objection. Argumentative,</p> <p>13 counsel. That's your argument, but that's not what</p> <p>14 the document says. So do you want him to agree</p> <p>15 with your argument? Is that your question, does he</p> <p>16 agree with you?</p> <p>17 MR. SABA: Go ahead and answer the question.</p> <p>18 MR. CIOFFI: What is your question?</p> <p>19 THE WITNESS: Yeah, please. Could you</p> <p>20 please --</p> <p>21 MR. CIOFFI: Did you understand the question?</p> <p>22 THE WITNESS: No.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Both you and Mr. Spence refer to Mr. McHugh as</p> <p>25 the Silver Fox when discussing either his employment</p>	<p>Page 276</p> <p>1 question. Counsel, you've seen that text, so --</p> <p>2 MR. SABA: There's no text.</p> <p>3 MR. CIOFFI: Yes, there is.</p> <p>4 MR. SABA: To Bob Shaffer?</p> <p>5 MR. CIOFFI: Yes, there certainly is. It has</p> <p>6 been provided to you.</p> <p>7 (Mr. McHugh enters the room.)</p> <p>8 (Deposition Exhibit 33 is marked for</p> <p>9 identification.)</p> <p>10 BY MR. SABA:</p> <p>11 Q. Mr. Shaffer, I've handed you what's been</p> <p>12 marked as Exhibit Number 33, which is Bates stamped</p> <p>13 Fifth Third McHugh 000517 through 000527. Are you able</p> <p>14 to identify this document for me?</p> <p>15 A. It's board minutes from September 21,</p> <p>16 2020.</p> <p>17 Q. Have you ever seen this document</p> <p>18 before?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you recall that this was the board meeting</p> <p>21 where you, Mr. Beaudin, and Mr. Evans presented the</p> <p>22 information regarding the assessment by RHR of</p> <p>23 Mr. Spence?</p> <p>24 A. I do, but I did not present any of the</p> <p>25 information. I was simply introducing Guy and Chuck</p>

<p style="text-align: right;">Page 277</p> <p>1 and reminding the board of some of the process and</p> <p>2 the CEO profile and so forth that had already</p> <p>3 previously been discussed and that they reviewed.</p> <p>4 The RHR representatives were responsible for</p> <p>5 presenting the information under evaluation of</p> <p>6 Mr. Spence.</p> <p>7 Q. Have you ever seen this document</p> <p>8 before?</p> <p>9 A. I don't recall.</p> <p>10 * * *</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 279</p> <p>1 compensation. So Greg was just going to head that off</p> <p>2 with this specific position. And wanted to, you know,</p> <p>3 give Phil some additional compensation for taking on</p> <p>4 that role.</p> <p>5 Q. Were these purported terms set forth in</p> <p>6 writing anywhere?</p> <p>7 A. They were not.</p> <p>8 Q. Is there any written evidence</p> <p>9 of what Greg Carmichael communicated to</p> <p>10 Phil McHugh as to what he would be given</p> <p>11 as a result of Tim Spence being promoted</p> <p>12 to president?</p> <p>13 A. I missed the beginning of that. I'm</p> <p>14 sorry.</p> <p>15 Q. Yes. Is there any written documentation of</p> <p>16 what Greg Carmichael communicated to Phil McHugh about</p> <p>17 what he would be given when Tim Spence is promoted to</p> <p>18 president?</p> <p>19 A. Not that I'm aware of.</p> <p>20 MR. SABA: That is all the questions I</p> <p>21 have.</p> <p>22 THE VIDEOGRAPHER: The time is 6:21 p.m. This</p> <p>23 concludes the deposition.</p> <p>24 (The following was recorded stenographically</p> <p>25 only.)</p>
<p style="text-align: right;">Page 278</p> <p>1 (The previous testimony is Confidential --</p> <p>2 Subject to Protective Order.)</p> <p>3 MR. SABA: We can go off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: The time is 6:11 p.m. We</p> <p>6 are going off the record.</p> <p>7 (A recess was taken from 6:11 p.m. to</p> <p>8 6:19 p.m.)</p> <p>9 THE VIDEOGRAPHER: The time is 6:19 p.m. We</p> <p>10 are back on the record.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Mr. Shaffer, earlier you were</p> <p>13 indicating that there was additional compensation</p> <p>14 offered to Mr. McHugh as part of what we consider</p> <p>15 a demotion, you considered it a lateral move to</p> <p>16 the consumer role. Is that set forth anywhere in</p> <p>17 writing?</p> <p>18 A. It is not in writing. Greg and I talked</p> <p>19 about it before he talked to Phil, and Greg</p> <p>20 communicated to me that he did communicate that to</p> <p>21 Phil. And the reason he did that is every time</p> <p>22 Phil would get a new role or increased</p> <p>23 responsibilities, I mean, the first thing Phil was</p> <p>24 after was hey, what's in it for me? How am I going to</p> <p>25 feed the family. You know, he always wanted additional</p>	

1 MR. CIOFFI: Defendants have no
2 questions.
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4
5

6 _____
7 ROBERT PAUL SHAFFER

8 _____
9 DATE

10 - - -
11 DEPOSITION CONCLUDED AT 6:21 P.M.
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C E R T I F I C A T E

STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Wendy L. Raymer, RPR, CRR, the undersigned,
a duly qualified and commissioned notary public within
and for the State of Ohio, do hereby certify that before
the giving of his aforesaid deposition, ROBERT PAUL
SHAFFER was by me first duly sworn to depose the truth,
the whole truth and nothing but the truth; that the
foregoing is the deposition given at said time and place
by ROBERT PAUL SHAFFER; that said deposition was taken
in all respects pursuant to stipulation of counsel; that
I am neither a relative of nor employee of any of the
parties or their counsel, and have no interest whatever
in the result of the action; that I am not, nor is the
court reporting firm with which I am affiliated, under a
contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I hereunto set my hand and
official seal of office at Cincinnati, Ohio, this 8th
day of September, 2023.

My Commission expires
December 6, 2026

S/Wendy L. Raymer, RPR, CRR
Notary Public - State of Ohio

1 DEPOSITION ERRATA SHEET

2 Date Taken: August 24, 2023

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury
7 that I have read the entire transcript of
8 my deposition taken in the captioned matter
9 or the same has been read to me, and
10 the same is true and accurate, save and
11 except for changes and/or corrections, if
12 any, as indicated by me on the DEPOSITION
13 ERRATA SHEET hereof, with the understanding
14 that I offer these changes as if still under
15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 ROBERT PAUL SHAFFER
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